



Laga Newsflash

More EEA legal arrangements in scope of Belgian Cayman Tax **Royal Decree of 21 November 2018**

The Cayman Tax, introduced in 2015 and already subject to several amendments, was essentially a look-through tax applicable to Belgian Personal Income Tax ("PIT") and Belgian Legal Entities Tax ("LET"). Income of qualifying entities (legal arrangements) was taxed directly in the hands of the founder or beneficiary. The amendments strengthened the Cayman Tax, then further eroded the principle of transparent taxation and introduced the taxation as a dividend of distributions by legal arrangements (effective since 17 September 2017). The [newsflash of 11 December 2017](#) provides previous coverage in that respect.

On 3 December 2018, a [new Royal Decree](#) was published and replaces the Royal Decree of 18 December 2015 containing an exhaustive list of all European Economic Area (EEA) entities with legal personality in scope of the Cayman tax (the principle being that EEA entities are excluded from Cayman tax, unless listed).

The previous EEA Royal Decree targeted the following:

1. Public or institutional undertakings for collective investments (UCIs) or alternative investment funds (AIFs) if they were held by one person or several related individuals
2. Foreign hybrid companies (i.e. tax transparent in the country of establishment but not in Belgium) with Belgian source income
3. A list of four specified entities of specified EEA countries, the most common being the Luxembourg Société de gestion Patrimoine Familiale ('SPF').

The new Royal Decree now abolishes this limited and specific 'EEA-blacklist' and introduces a definition of EEA legal arrangements, using more general wording.

Private UCIs and AIFs held by one or more related persons

The new Royal Decree closes a loophole regarding private UCIs and AIFs, more specifically regarding Luxembourg SICAV-SIFs.

Under the previous Royal Decree, it could be argued that private UCI/AIF were not in scope of the specific anti-abuse rule which applied to certain UCIs/AIFs, of which all the rights are closely held. Thus, the Luxembourg SICAV-SIF arguably did not qualify as a legal arrangement.

Going forward, the Cayman Tax will apply to all public, institutional and private UCIs, as well as all public, institutional and private AIFs. Clear definitions referencing the applicable EU Directives are included in the Decree. The Cayman Tax will only apply if the UCI/AIF are held by one person or by several related individuals, thus including SICAV-SIFs.

Hybrid companies

Hybrid companies are tax transparent in the EEA jurisdiction where they are established, but not tax transparent according to Belgian tax law.

Based on the former Royal Decree, hybrid companies were only in scope to the extent they derived Belgian source income. However, the new Royal Decree also includes foreign source income derived by these hybrid companies.

In order to avoid an unlimited broadening of the Cayman tax's scope, hybrid companies in which the shareholders or partners pay a minimal of 1% income tax in the country of establishment (compared to the income tax rate if Belgian income tax rules would apply) are excluded.

The report to the King explicitly states that it is not the intention to target so called 'translucent companies' (like the French SCI - Société Civile Immobilière) which have legal personality but where income tax is levied in the hands of the shareholder or partner, and not at company level.

It is also not the intention to tax hybrid companies where the main purpose is to exercise an activity that generates income that would be exempt from Belgian income tax, based on a double tax treaty if a Belgian tax resident would have received this income directly.

Non-taxed or (very) low-taxed entities (less than 1 %)

The last category of legal arrangements in the new Royal Decree applies to entities that are not subject to income tax, or subject to very low income tax; 'very low' being broadly defined as 'income tax representing less than 1% of the taxable income as determined in accordance with the rules applicable under Belgian tax law. However, it is within the

legislation's intentions (as set forth in the report to the King) that the lack of a limited list does not prevent the previously mentioned four types of legal arrangements from continuously qualifying as legal arrangements. Indeed, their income is not taxed under Luxembourg/Liechtenstein income tax legislation.

Given the last category's (very) wide scope, it is currently unclear to which EEA entities the Cayman tax will (even unintentionally) apply.

Priority rule

The new Royal Decree clarifies the relationship between the three categories by foreseeing a priority rule. The 1% threshold will only apply to entities that are neither a UCI nor a hybrid company.

Entry into force

This new Royal Decree applies to income received, granted, or made payable by a legal arrangement as of 1 January 2018.

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