Belgian tax audits: Increased focus on passive income streams and international cooperation

July 27, 2020

In brief

Recent developments in the international tax world are finding their way into Belgian tax investigation practices. Belgian tax authorities are developing expertise with specialized and dedicated inspection teams focusing on the tax treatment of interest, dividend, and royalty flows. The Belgian tax authorities also increasingly take recourse to international exchange of information and multilateral tax audits as a strategy to build their positions.

In detail

A number of anti-avoidance provisions have been introduced over the last years. These include the general anti-abuse rules of the EU Parent-Subsidiary Directive; the EU Anti-Tax Avoidance Directive (ATAD); and the incorporation of a Principal Purpose Test (PPT), as a minimum standard under the Multilateral Instrument, in many double tax treaties, including the Belgian ones. The European Court of Justice also issued important judgments on beneficial ownership in the so-called ‘Danish cases’ on February 26, 2019, in which the Court took a broad approach to the beneficial ownership concept and mentioned lack of beneficial ownership as an indicator of tax abuse. Finally, the recent introduction of OECD transfer pricing guidelines for financial transactions significantly increases the threshold for substance and control over risk for both borrowing and lending entities engaging in financial transactions.

Observation:

Actions by the Belgian tax authorities seem to reflect these developments. PwC has seen a recent increase in tax audits focusing on passive income streams (dividend, interest, and royalty), with the Belgian tax authorities seeking to deny withholding tax benefits claimed by taxpayers, particularly when intermediary entities are involved in the transactions. Other cross-border topics — such as anti-hybrid, CFC rules, and the arm’s-length nature of transactions — are expected to be addressed in these audits.

As part of these examinations, there has been more international exchange of information between tax authorities to obtain data on foreign enterprises of multinational groups to support their claims. ***Note:*** In practice, the Belgian tax authorities also are increasingly initiating multilateral tax audits in order to cooperate with foreign tax authorities on transfer pricing and other international tax matters. As a consequence of this exchange of information, traditional investigation and assessment periods often are extended. As a practical matter, managing international exchange of information and inquiries from multiple tax authorities at the same time can be complex and time-consuming for taxpayers.

The takeaway

Multinational groups that have or consider transactions involving significant royalty, dividend, and/or interest amounts with intermediate companies should be prepared to defend the correctness of their tax positions, even for commonly applied legal and tax models.

The timing of these Belgian tax audits is challenging, as many companies are in the middle of recovery (both financially and organizationally) from the COVID-19 pandemic and are bracing for difficult economic conditions. Intensive tax audits may result in a need to reshuffle already scarce resources. Taxpayers need to be vigilant in light of these developments. Reviewing the compliance and sustainability of the tax and legal models and carefully considering future transactions may help taxpayers avoid additional unpleasant cash surprises.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

PwC Belgium

Bram Markey, *Brussels*
Transfer Pricing and Tax Controversy
+32 473 79 46 78
bram.markey@pwc.com

Evi Geerts, *Antwerp*
International Tax Services
+32 492 74 39 70
e.geerts@pwc.com

Véronique de Brabanter, *Brussels*
Tax Litigation PwC Legal
+32 473 59 34 77
veronique.de.brabanter@pwc.com

Tax Controversy and Dispute Resolution Global Leader

David Swenson, *Washington, DC*
+1 202 431 7114
david.swenson@pwc.com