Belgium; Netherlands

Belgium and Netherlands Sign Tax Treaty

22 June 2023

Report from IBFD Tax Treaties Unit

On 21 June 2023, Belgium and the Netherlands signed an income tax treaty, in Brussels. Once in force and effective, the new treaty will replace the Belgium - Netherlands Income and Capital Tax Treaty (2001), as amended by the 2009 protocol. The new treaty aims to prevent double taxation, combat abuse, and address ongoing issues under the current treaty, particularly concerning teachers, professors, athletes and artists.

Resolving Existing Issues

The new treaty addresses various issues faced by teachers, professors, athletes and artists who work across borders. With the revised agreement, teachers and professors working across borders will generally be subject to taxation in the country where they work. This promotes fairness, ensuring they pay taxes in the same country where they owe social security contributions. Consequently, they will be treated equally to other employees, unlike under the current treaty. For athletes and artists, the new treaty alleviates administrative burdens by exempting them from taxation in the other country during short-term performances across borders. Instead, they will pay taxes on the relevant income in their country of residence.

Anti-Abuse Provisions and Profit Taxation

The new tax treaty also incorporates provisions to counter tax avoidance through treaty abuse. It enables the country where activities are conducted to levy corporate income tax earlier than under the current treaty. These provisions stem from the international BEPS project against base erosion and profit shifting, which targets tax avoidance.

Emigrated Directors and Shareholders

The treaty introduces two amendments for directors and majority shareholders who have migrated from the Netherlands to Belgium with their own BV (*Besloten Vennootschap*, a private limited company). Under the new treaty, the Netherlands can tax dividends for up to 10 years after emigration, even if the BV has relocated to Belgium. Additionally, it is specified that Belgium will not impose taxes on the sale of shares or liquidation of the BV if there is still an outstanding Dutch tax claim. This claim must pertain to the increase in value of the shares during the period when the shareholder was a resident of the Netherlands.

Next Steps

Discussions are still ongoing between the Netherlands and Belgium regarding the situation of cross-border workers who are currently working from home. The decision to proceed with the treaty signing now, without waiting for the conclusion of these discussions, has been made.

Before the treaty can come into effect, it requires the approval of the respective parliaments in both countries. Netherlands and Belgium will also jointly provide an explanation of the treaty. In the Netherlands, the treaty will undergo the usual process of seeking advice from the Council of State and subsequently being presented to the Parliament.

The new tax treaty between the Netherlands and Belgium is a significant step towards strengthening bilateral relations and ensuring a fair and transparent taxation framework between the two countries. Further developments will be reported as they occur.

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