



Details

Service: Advisory

Type: Business and industry issue

Date: 08/03/2016

[Belgium - KPMG - Research - Tax & Legal News Flashes - e-Tax Flash](#)

Belgian TIS-taxation limited to capital gain actually realized



New administrative guidelines of the Belgian tax authorities confirm that the Belgian tax on savings (Belgian TIS-taxation) is limited to the capital gain actually realized by the investor, even when the shares or units in the qualifying collective investment vehicles were acquired respectively before 1 July 2005 (UCITS) or before 1 July 2008 (non-UCITS). This limitation of the tax base applies upon attribution or payment of the income (at source). As a consequence, Belgian individual investors can request the intervening financial institutions to limit the 27% withholding tax to the actual capital gain, provided the acquisition date and the acquisition price of the shares or units are known.

The Belgian tax authorities have issued a new addendum to the circular letter of 20 August 2014 regarding the maximum tax base for the Belgian tax on savings (Belgian TIS-taxation) in case of a disposal by a Belgian resident individual investor of shares or units in a collective investment vehicle investing more than 25% in debt claims, or upon a (partial) liquidation of such collective investment vehicle (Addendum of 15 February 2016 to the circular letter AAFisc Nr. 33/2014 of August 20, 2014).

Following article 19bis of the Belgium Income Tax Code (hereafter "BITC") the taxable income realized upon disposal (sale, redemption) or upon liquidation consists of the interests and net capital gains/losses on debt claims realized within the fund during the period that the Belgian individual resident investor has held the shares or units (the so-called "delta Belgian TIS"). In case no Belgian TIS figures are available, the taxable amount is equal to the increase in net asset value of the shares or units between acquisition date and disposal date, multiplied by the percentage of assets invested in debt claims. If this percentage is not known, the full capital gain is taxable (the "delta NAV"). According to the Belgian tax authorities (e.g. circular letter of 25 October 2013) the actual capital gain realized is also the maximum taxable amount, also when Belgian TIS figures are available. When the "delta Belgian TIS" is higher than the actual capital gain, the Belgian tax on savings will only be imposed on the latter.

However, for shares or units acquired respectively before 1 July 2005 (in respect of UCITS or funds established outside the EEA) or before 1 July 2008 (in respect of non-UCITS), the aforementioned article 19bis BITC states that the "delta NAV" has to be calculated starting from the net asset value of the shares or units on the date of respectively 1 July 2005 or 1 July 2008.

As this could result in unreasonable situations whereby the Belgian investor would be taxed even when realizing a loss on the disposal (e.g. in case the net asset value of his shares or units had dropped below acquisition value on 1 July 2005 (c.q. on 1 July 2008)), the Belgian tax administration allows that the Belgian tax on savings is anyway limited to the capital gain actually realized. By circular letter of 20 August 2014 the Belgian tax authorities stated that a protest letter can be filed by the Belgian investor in order to claim a refund of the excessive amount of withholding tax, provided he can prove the acquisition date of the shares or units and the acquisition value.

Because of the alleged contra legem character of this administrative position, the Belgian financial institutions were reluctant to apply the limitation at source.

The [new addendum of 15 February 2016](#) now states that the limitation of the taxable income to the actual capital gain is applicable as from the moment of attribution or payment of the income. Consequently, Belgian individual investors can request the intervening financial institutions to limit the 27% withholding tax to the actual capital gain, provided the acquisition date and the acquisition price of the shares or units are known.

Finally, the addendum reminds that the debtor of the withholding tax (the intervening financial institution) as well as the receiver of the capital gain can file a protest letter with the competent regional tax director in order to claim a refund of excess withholding tax.

Share this



Kris Lievens

Partner Corporate Tax

+32 (0)27084761

[Kris Lievens](#)
[Kris Lievens](#)

Contact

KPMG Tax Advisers

 Bourgetlaan - Av. du Bourget 40 B-
 1130 Brussels
 Tel.: +32 2 708 38 24

 [Send us an e-mail](#)
[Return to the e-Tax Flash](#)

Although the addendum does not solve the alleged contra legem position of the Belgian tax authorities and it is regrettable that the Belgian legislator has not intervened by amending article 19bis BITC, the addendum at least allows the financial institutions to limit the withholding tax to the actual capital gain without having the risk of discussions with the Belgian tax inspector.

[Legal](#) | [Privacy](#)

[Employee](#) | [My homepage](#) | [Glossary & Help](#) | [Accessibility](#) | [Site Map](#)

© 2016 KPMG Support Services, a Belgian Economic Interest Grouping ("ESV/GIE") and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

KPMG International Cooperative ("KPMG International") is a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

