



Laga Newsflash

Tax audit wave on foreign investment income (U.S. FATCA - CRS)

As a result of FATCA (Foreign Account Tax Compliance Act) and CRS (Common Reporting Standard), Belgian tax authorities receive information from other countries, regarding financial accounts held by Belgian residents in other jurisdictions.

Current tax practice demonstrates that Belgian tax authorities are using information received from foreign tax authorities to review Belgian tax residents' fiscal situation. Belgian residents are currently receiving requests for information and/or notices of amendment, correcting their personal income tax return by additionally taxing foreign investment income that was not declared correctly. Many Belgian residents receiving investment income from the US are currently under tax authority scrutiny.

Taxation of foreign investment income

Interests accrued and dividends received on financial accounts held abroad qualify as income from movable property. Given the principle of worldwide taxation, this income is subject to taxation in Belgium, as state of residence, even though the income may have already been taxed in the foreign source state.

If a double tax treaty is applicable, it only grants partial relief from double taxation by partially limiting the source state's taxing rights.

As such, Belgian tax residents have an obligation to declare this foreign investment income in Belgium for personal income

tax purposes. This income is taxable according to the applicable rate for the relevant year (25% - 27% - 30%).

Investigation and assessment periods

The tax authorities can invoke several assessment periods to tax foreign income if Belgian tax residents did not declare it correctly.

As with all tax audits, the tax authorities can invoke the three-year investigation and assessment period. In 2019, the tax authorities can still audit and tax income relating to 2016.

The tax authorities can also invoke the special assessment period for situations where information received from foreign tax authorities indicates that a foreign taxable income was not declared correctly in Belgium. The tax authorities will have two years from receipt of information to investigate the taxpayer's situation and tax income from any of the five assessment years preceding the assessment year in which the information was received. For example, the current audit wave covers information received in 2017 from the U.S. authorities, meaning that tax audits and possible tax assessments can theoretically go back to income year 2011 (i.e. income that should have been declared in 2012).

Finally, the tax authorities can also invoke the seven-year investigation and assessment period for tax fraud. However, this assessment period requires the Belgian tax authorities to prove that income was not declared because of fraudulent intentions. In applying this method of audit and taxation during 2019, the tax authorities can still go back to income year 2012.

Fraud

Practice shows that tax authorities have already decided to qualify any undeclared foreign accounts and income as tax fraud. This approach and default qualification is highly questionable, especially where taxpayers were not aware of errors in their tax returns, or where there were no malign intentions in not declaring the investment income.

Steps to take

It is important to verify whether income included in the notice of amendment is correct (i.e. is the exchange rate applied correctly? Are foreign withholding taxes taken into account?), and whether tax authorities applied the available investigation and assessment periods correctly.

It is strongly advised to challenge the tax authorities' position with respect to the 50% tax increase.

Furthermore, taxpayers should also review whether investments held on these foreign accounts have previously undergone their correct (Belgian and/or foreign) tax regime.

Laga's Tax Controversy team is readily available to provide assistance in the above steps.

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