

Abstract

Special taxation system relating to foreign executives (Finance)

As in many other European countries, foreign executives enjoy a beneficial tax treatment in Belgium. It appears from an audit performed by the Court of Audit that the Belgian system is the only system that does not set any effective cap on the potential tax benefits. The legality of the system and the effectiveness of the Inland Revenue inspection are questionable. Finally, it is difficult to assess to what extent the system meets its initial aim: the creation of incentives for foreign investments in our country.

The audit

During the year 2001, the Belgian Court of Audit performed an audit on the laws and regulations governing the special taxation system relating to foreign executives as well as on the operation of the tax services concerned. The final report, which incorporated both the administration's and the minister's responses, was sent to the Federal Parliament on 25 February 2003.

The audit outcome

Legality of the system

The Court of Audit is of the opinion that the enforcement by way of a circular does not respect the delimitation of competences among the executive and legislative powers as established by the Constitution. The Court of Audit also considers that this circular is in breach of several provisions of the Income Tax Code.

Effectiveness of the system

An adequate public approach implies a permanent monitoring of the effectiveness of a measure. In fact, the administration does not have an objectively founded image of to what extent this measure helps sustain growth or maintain foreign investments in Belgium.

International comparison

Several European countries provide expatriates with a beneficial treatment. However, the Belgian system is the only one that does not set any effective cap on the potential tax benefits. In reality, there are some extreme cases in which executives are almost totally exempt from tax without any limitation in time.

Inland Revenue inspection

Inland Revenue inspection is not very extensive and, in spite of its cross-border nature, little information is exchanged with foreign tax authorities. Gaps in the laws and regulations and interpretation by the administration do not allow to ascertain conclusively the temporary character of the residence in Belgium, which is at the core of the beneficial treatment.

The recommendations

The Court of Audit has issued a number of concrete recommendations aimed at fighting possible abuses and excesses in the short term. As a result, tax advantages should be limited both in terms of duration and amount and the verification of the tax returns as well as of the individual applications to benefit from the favourable treatment should be organized more effectively. With regard to the issue of legality, it is worth mentioning that the Arbitration Court currently examines whether the system does not discriminate against residents in favour of non-residents. The European Commission also examines the favourable treatment relating to expatriates. Subject to the decisions taken by these two institutions, the Court of Audit considers that due to the objections raised to its legality, the special taxation system relating to foreign executives should eventually be fundamentally reformed.