Belgium
Belgique
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National Reporter
Thierry Denayer[1]

1. General comments

1.1. General characteristics of the procedures for claiming treaty relief in Belgium

1.1.1. Direct effect of substantive treaty rules

The principle of the priority of treaty law over domestic legislation is not provided for in the Belgian Constitution but has been indisputably established by case law: once a treaty is approved by Belgian Parliament, the treaty provisions having direct effect prevail over pre-existing as well as subsequent domestic legislation.[2] Thus, the substantive rules of Belgian DTCs have direct effect in Belgium without requiring formal implementation or recognition within the relevant domestic tax legislation itself.

1.1.2. Treaty relief with respect to earned income

1.1.2.1. Self-assessment

Belgium's domestic income tax legislation does not provide for specific procedures for the claiming of treaty relief.[3] The procedures to be followed for claim-

[1] Member of the Bar of Brussels; Partner De Bandt, Van Hecke & Lagae, Brussels.

[2] Cass., 27 May 1971, *Fromagerie Franco-Suisse "Le Ski",* pas., 1971, I, 886; Official Commentary on Tax Treaties (referred to hereinafter as "Coram. TT"), No. 0/14. Traditionally. Belgian case law refused to sanction the non-conformity of parliamentary legislation with the Constitution. It is only since the Law of 6 January 1989 that the Court of Arbitration is given the explicit authority to sanction legislation for non-conformity with a number of specific sections of the Constitution, which include the non-discrimination principle. The extent to which such sections of the Constitution prevail over treaty law is still controversial (Court of Arbitration, 16 October 1991, F.J.F. No 91/211; Court of Arbitration. 3 February 1994. State Gazette. 11 March 1994; B. Peeters. "Interpretation of double taxation conventions", Belgian report, *Cahiers de droit fiscal international,* 1993; R. Deblauwe, "Traité contre Constitution et Cour d'Arbitrage contre Cour de cassation. La hiérarchie des normes". *Le Fiscologue International,* No. 131, Extra, 30 November 1994, p. 9).

[3] The Income Tax Code merely defines the domestic method applied to grant treaty exemption for income which is reportable in an ordinary annual income tax return.

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ing treaty relief are to the extent possible embedded within Belgium's ordinary domestic procedures for processing tax claims.

With respect to income which is to be reported by the taxpayer in an ordinary annual income tax return, treaty relief is as a rule claimed on a self-assessment basis by a declaration made in the tax return itself. Making such a claim does not generally require following any prescribed formal procedure or providing any particular documentation. The claim for treaty relief is subject to the ordinary domestic audit and appeal procedures. Additionally, the taxpayer can also initiate the specific procedure available under the mutual agreement provision of the relevant DTC in cases where taxation not in accordance with a DTC would otherwise result.

1.1.2.2. Avoiding excess tax prepayments

In the Belgian income tax system, tax is generally to be prepaid during the year in which income is earned. Prepayment occurs either through a system of quarterly prepayments by the taxpayer or through withholding at source by the payer or other person intervening in the payment or attribution of the income.

The system of quarterly prepayments applies to most forms of earned income of self-employed persons and of enterprises. The system operates on a "voluntary" basis. This means that the taxpayer determines freely the amount of his prepayments. However, if at the time the tax liability is determined it appears that insufficient tax was prepaid during the taxable period, the taxpayer is sanctioned by a very high lump sum interest surcharge. The system allows one to anticipate treaty relief by limiting tax prepayments accordingly. Proof of eligibility for treaty relief does not have to be provided at the time prepayments are due.

1.1.3. Treaty relief with respect to tax withholdings at source

Tax is to be withheld at source with respect to most forms of Belgian-source capital income, earned income of employees, directors and partners of personal companies and several other categories of income earned by non-resident taxpayers. If such income qualifies for treaty relief, a tax prefinancing cost is only avoided if relief is immediately available at source.

With respect to withholding tax due on income of employees, directors and partners of personal companies, no specific procedure for treaty relief at source is provided for. On the basis of the direct effect of treaty law, tax regulations allow the payer of such income to refrain, at his own risk, from withholding tax if he is able to determine that the income involved is eligible for treaty exemption in Belgium.[4]

With respect to Belgian withholding tax on Belgian-source dividends, interest or royalties paid or attributed to residents of a treaty country, specific application

[4] Royal Decree implementing the Income Tax Code, art. 87; Commentary ITC, No. 275/5 and Comm. TT, No. 15/19. In case it is subsequently established that the treaty exemption was not applicable, the debtor of the withholding tax may be assessed for the tax not withheld plus late payment interest.

forms are provided to apply for treaty relief at source. Where relief at source cannot be applied, the same forms can be used to apply for a refund (see below in section 2.3).

1.2. Guidance for claiming treaty relief

1.2.1. Official commentary on the procedures for claiming treaty relief

Information on the procedures and forms for applying treaty relief is available through a comprehensive commentary on Belgian DTCs issued by the Central Income Tax Administration. The commentary describes the Administration's view and interpretation of the substantive rules of Belgian DTCs as well as the related procedural rules. The commentary describes in fairly good detail the procedures to be followed and identifies the tax offices that handle claims for treaty relief. Within the Belgian legal system, the commentary has the same status as ordinary tax regulations.

1.2.2. Access of taxpayers to forms for claiming treaty relief

The commentary specifically identifies and describes the tax forms designed for treaty relief purposes. This is not limited to the Belgian forms. The forms which the Belgian tax administration has obtained from other tax treaty countries are also listed and succinctly commented upon. For certain foreign forms a translation into French and Dutch is provided (e.g. certain forms to be used in Japan, Pakistan, etc.). The Belgian and foreign forms for claiming treaty relief are easily available at a centralised tax office in Brussels. The forms are made available for free.

1.2.3. Tax offices in charge of treaty relief procedures

The routine handling of treaty relief issues for taxpayers who file an annual income tax return (as resident or non-resident taxpayers) is handled by the normal local tax offices (generally through the auditing of the tax return in which treaty relief is claimed). Those offices also issue the affidavits regarding residence status and other confirmations needed by resident taxpayers for use in other treaty countries.

A central foreigners' service in Brussels coordinates information on relief at source which is processed by the normal tax offices and also processes claims for the refund of withholding taxes.

The Central Income Tax Administration acts as Belgium's competent authority in applying DTCs[5] and includes two services specifically in charge of resolving issues of implementation of tax treaties. These services are responsible for updating the commentary mentioned above and for providing guidance to other tax offices with respect to the processing of treaty relief requests.

[5] Comm. TT. No. 3/41. 25/04. 25/18 a.f., 25/33, 25/56, 26/15 and 26/33 a.f.

1.2.4. Assistance to taxpayers and rulings

In general, taxpayers and their counsel have easy access to the tax administration for information on matters regarding treaty relief, especially with the specialised services of the Central Income Tax Administration and with the special foreigners' tax service in Brussels.[6]

Guidance with regard to more intricate issues of treaty interpretation tends to be available only from the specialised services of the Central Income Tax Administration. It is generally possible to discuss an issue with a competent tax official of these services on short notice. Obtaining written confirmation generally takes time and is not always possible since the administration has no obligation to issue a written confirmation. Such confirmations have no binding legal force before the courts but are generally followed by the local tax offices. Routine ruling requests which do not involve issues of principle tend to be more and more often delegated to the local tax services.

Belgian tax law also provides for a system of formal advance tax rulings which have binding legal force and which can be requested from a special central Ruling Commission. However, the competence of this Commission to issue binding rulings is limited to interpretation issues on a number of exhaustively defined sections of the Income Tax Code, the Inheritance Tax Code and the Registration Tax Code. Its competence does not extend to treaty application issues even where treaty law interferes with domestic provisions for which the Commission has competence. There are no prospects for extending the competence of the Ruling Commission to treaty application issues.[7]

2. Specific situations

2.1. Claiming residence status

2.1.1. The case of the landed immigrant having to establish tax residence in Belgium

2.1.1.1. Claiming treaty residence through domestic tax residence

According to article 4 of the OECD model treaty, the claiming of residence status under a DTC requires in the first place that the taxpayer acquires residence status under the domestic tax legislation of the treaty country involved.

Under domestic tax law, the general criteria which determine Belgian tax residence are the place of domicile and the centre of economic interests. However,

[6] Reportedly, the services of the Central Income Tax Administration dealing with the implementation of tax treaties are heavily solicited in this respect: more than 1,800 written applications for information are processed annually and an average of more than 50 requests for information over the telephone are handled daily.

[7] Response of the Minister of Finance to Parliamentary Question No. 364 of 29 March 1996, Bull. Contr., 1997, p. 1447.

the ITC sets forth a rebuttable legal presumption that whoever is registered in the National Register of Individuals is considered a fiscal resident of Belgium.[8] The presumption is rebuttable to the extent the taxpayer can prove that he does not meet the general criteria. Registration in the National Register thus has the effect of shifting to the taxpayer the burden of proof to establish that he is not a resident.

An individual who immigrates to Belgium does not have to notify the Income Tax Administration of his arrival. The Ministry of the Interior and the Belgian municipal authorities, however, operate a nation-wide system of registration of all individuals, Belgians and foreigners, who stay in Belgium. Any person staying in Belgium must register with the local municipality within three working days of his arrival in Belgium unless he stays in a hotel or hospital.[9] Upon registration, the individual is entered into the National Register mentioned above and is granted the corresponding identity card. The Income Tax Administration is automatically informed of any registration in the National Register.

Upon registration in the National Register an individual is listed by the Income Tax Administration as a presumed resident and will normally be provided automatically with an income tax return form in due time (i.e. for the first time shortly before June of the year following immigration). Should the taxpayer not receive such form in time, he has the duty of claiming the form from the local tax office by 1 June.[10] The claiming and/or filing of such form will for many immigrants constitute the first mandatory Belgian income tax formality.[11]

If the taxpayer claims not to be a resident under Belgian domestic tax law, he must express this claim by refusing to complete an income tax form for residents, and requesting and filing a non-resident income tax return.

2.1.1.2. Residence attestations

A domestic tax resident who needs evidence of tax residence of Belgium under a DTC can obtain from the local Belgian tax office a general attestation form (“276 Conv”). Apparently, a landed immigrant can already obtain this form shortly after being registered in the National Register. The tax regulations provide that when requesting the form it is necessary to specify the nature and amount of income for which treaty relief will be claimed in the other country. It is reported, however, that the form is in practice also granted even if no specific income is mentioned. With regard to certain types of income (dividends, interest, royalties and employ-

8 ITC. art. 3. §2; Comm. ITC, No. 3/19 a.f. The National Register includes both the Register of Belgians and the Register of Foreigners as well as a special Register for Refugees (Comm. ITC, No. 3/43 a.f.).

9 Law of 15 December 1980, as amended, on the access to Belgian territory, the staying, settlement and repatriation of foreigners.

10 ITC, art. 308, §3.

11 Taxpayers who are subject to the system of quarterly tax prepayments, may have to register already during their first income year with the prepayment tax service in order to obtain a reference number for making tax prepayments.

ment income of frontier workers) the attestation can also be made on the special forms used by the foreign tax authorities for claiming treaty relief.[12]

As appears from the wording of the Form 276 Conv, it only provides a prima facie confirmation of residence status ("according to the information available to the Tax Administration"). This explains why the form can be obtained merely on the basis of the fact that a taxpayer is entered into the National Register. As long as the taxpayer does not rebut the presumption of domestic tax residence triggered by the registration in the National Register and as long as the Administration is not informed of a claim of residence status by the taxpayer under the domestic tax laws of another treaty country, the taxpayer is presumed to qualify as a resident of Belgium under its DTCs.

2.1.1.3. The special case of expatriate executives enjoying a privileged tax status in Belgium

Under certain conditions, Belgium offers a privileged tax status to expatriate executives who are assigned to Belgium on a temporary basis. The privilege includes a tax exemption for certain expatriation allowances as well as of the portion of the employment income which corresponds to days worked outside of Belgium. The special status operates on the basis of a recognised non-residence status : in application of specific and rather lenient administrative guidelines, such expatriates are considered to have rebutted the presumption of domestic residence status triggered by their registration in the National Register.[13] The special status is granted only upon a specific application to be filed by both the expatriate and the employer within six full months after the start of the Belgian assignment. The actual recognition of the special status and corresponding non-residence status is granted following an audit and generally occurs between 6 to 18 months following the application. The recognition, if obtained, is given retroactive effect as of the start of the Belgian assignment. Pending the application, the executive can already file tax returns as a non-resident assuming the special status will be granted. Equally, the employer can, at his own risk, already reduce the tax withholdings on salaries paid to the executive. If the recognition is eventually not obtained, the expatriate would in most cases be treated as an ordinary resident taxpayer under the normal interpretation of the criteria for tax residence.

Since a recognised expatriate is not treated as a tax resident of Belgium domestically, Belgian residence status is not available for DTC purposes either. Accordingly, the Belgian tax administration would not issue the attestations mentioned above in section 2.1.1.2 for such an expatriate. The expatriate can, however, obtain an *ad hoc* affidavit which states that the taxpayer is *de facto* actually living in Belgium but is taxable as a non-resident taxpayer.

A recognised expatriate can at his request revoke his special status and be treated as an ordinary resident taxpayer. Reportedly, such revocation can be given retroactive effect to previous tax years which are not yet barred by statute (nor-

12 Comm. TT, No. 4/05.
13 Comm. ITC, No. 3/15.14 and 3/46.

mally the three income years preceding the current year) and the normal attestations of Belgian tax residence can then still be obtained for such years.

2.1.2. The case of the newly departed emigrant claiming non-residence status in Belgium

2.1.2.1. Loss of domestic and treaty residence status

A newly-departed emigrant would in a normal case claim to no longer be a resident of Belgium for purposes of both the DTCs and domestic tax law. Unless the emigration occurred exactly on 31 December of a calendar year, the emigrant normally has to take the initiative of claiming non-residence status domestically by requesting from the local tax office a special final income tax return for reporting taxable income as a resident for the period up until the date on which residence status ended. This form must be filed within three months from this date.[14]

The loss of Belgian tax residence is relatively easily accepted where the emigrant leaves Belgium together with the members of his household, if any, and no longer occupies a dwelling in Belgium. In such case the taxpayer should of course "de-register" his presence at the local municipality from the earliest moment possible.

In case of de-registration, the loss of residence status would normally be accepted prima facie. The issue of residence status may, however, arise at a later moment when the tax administration audits the taxpayer. The tax regulations provide that where the taxpayer returns to Belgium within 24 months, or successively moves his foreign residency from country to country, he is presumed to have maintained Belgian tax residence during the foreign stay.[15] It may thus be useful for the taxpayer to be able to produce evidence of the fact that he is treated as a resident taxpayer in one specific foreign country.

In the absence of the de-registration described above, the legal presumption of tax residence mentioned above in section 2.1.1.1. would remain applicable and the alleged loss of domestic residence status may easily become an issue during the normal domestic audit and appeal procedures.

2.1.2.2. Loss of treaty residence only

Where a taxpayer recognises that he remains a resident under Belgian domestic tax law but claims that he also qualifies as a resident of another treaty country and that this foreign residence prevails under the tie-breaking rules of the applicable DTC, tax regulations provide that local tax offices should submit the case to the Central Income Tax Administration.[16]

If the Belgian tax administration concludes that a person indeed qualifies as a resident of both countries, then they will apply the treaty tie-breaker rules. The

14 ITC, art. 309.
15 Comm. ITC. No. 3/67.
16 Comm. ITC. No. 3/15.13; Comm. TT, No. 4/207.

Belgian regulations consider that the first treaty tie-breaker ("permanent home") corresponds to the domestic definition of a taxpayer's domicile and that the second treaty tie-breaker ("centre of vital interests") includes the domestic notion of "centre of economic interests". It is, however, generally accepted that in deciding on a person's country of residence under the tie-breaker rules, the Belgian authorities may not apply the legal presumption with respect to the domestic definition of residence.[17]

In the event a disagreement persists, the Central Income Tax Administration would have to initiate consultations with the tax authorities of the other country as provided for in the relevant DTC. The Belgian tax regulations provide that such consultation is pursued according to the treaty procedure for mutual agreement.[18]

2.1.3. The case of the dual resident company

A company which is treated both by Belgium and by another treaty country as a resident company under their domestic tax laws, and which also claims to be a resident of Belgium under the tie-breaker provisions of the applicable DTC because the place of effective management is in Belgium, will hardly face any formal difficulties in Belgium. Since the Belgian company laws also define their scope of application on the basis of the criterion of the place of effective management, such company will be treated in Belgium in all respects as an ordinary Belgian company (regardless of its domestic tax residence status in the other treaty country). The residence attestations available to individual resident taxpayers as mentioned above under section 2.1 can also be obtained by corporate taxpayers. To avoid any doubt as to the position of the Belgian tax authorities with respect to the treaty's tie-breaker rules, the company may submit the issue of the dual residence status to the Central Income Tax Administration. If needed, the latter would then initiate consultation procedures with the tax authorities of the other treaty country.

The reverse situation where the treaty's tie-breaker rules allegedly attribute treaty residence status to the other treaty country is less straightforward. If the determination is based on the fact that the company's place of effective management is in the other treaty country, then according to certain case law the company may well no longer qualify as a resident company under Belgium's domestic tax law either (Belgian court decisions have held that where a company has its seat of effective management outside of Belgium and its Belgian statutory seat does not correspond to its effective principal office, then the company is to be treated as a non-resident company).[19] The tax regulations, however, recognise that a company may have its treaty residence in another treaty country under the

[17] Lagae, J.P., "La réforme de l'impôt des non-résidents et la consolidation internationale", in *Marché intérieur, réformes fiscales belges et directives fiscales européennes,* Brussels, 1990, XII, no. 11, p. 6.

[18] Comm. TT, No. 4/207.

[19] Court of Appeals of Brussels, 29 June 1982, F.J.F., No. 82/199.

tie-breaker rules and still qualify as a resident company under domestic Belgian tax law by having its statutory seat in Belgium.[20] In such a situation, the issue of the foreign treaty residence status would presumably arise in Belgium when the company claims treaty relief in the form of a reduction of or exemption from Belgian withholding taxes or of a limitation of the taxable base on the basis of the DTC. This would in the first place require that the company produce proof of its foreign tax residence, normally through an attestation of the tax authorities of the other country. This case would normally be submitted to the Central Income Tax Administration either by the company itself or by the local tax office. The Central Income Tax Administration would probably want to consult with the tax authorities of the other treaty country before making a decision.

2.2. The frontier worker provision in the DTC between Belgium and France

As noted above, Belgian DTCs generally do not include procedural rules setting forth specific formalities for claiming treaty relief. One noteworthy specific exception to this is found in the current treaty between Belgium and France. The exception is noteworthy because it illustrates how the inclusion of a formal rule within a substantive DTC provision may provoke an unintended change of the substantive rule itself.

The exception relates to article 11 of the treaty with France which deals with income from employment (dependent services). Subsections 1 and 2 of article 11 provide for the usual general attribution rule (taxation in the country where the employment services are performed, except for taxation in the country of residency if the conditions of the so-called 183-day rule are met). Subsection 2 (c) provides for a derogation from this general rule for frontier workers. Frontier workers remain taxable on their employment income in their country of residence.

This derogation for frontier workers is provided for in Belgium's DTCs with three neighbouring countries (the Netherlands, Germany and France). This derogation is traditionally considered not to be available on an optional basis: the regime applies mandatorily whenever the substantive criteria for application of the regime are met.[21] Thus, the taxpayer does not have the option of forgoing the frontier worker regime.

In the treaties with Germany and the Netherlands, the derogation for frontier workers is defined as a purely substantive rule. Specific forms and application procedures have been provided for in this respect outside the scope of the DTCs in separate agreements between the Belgian and the Dutch and German tax authorities. In the treaty with France, which dates from 1964, reference to an application form is included in the frontier worker provision itself. It reads as follows:

[20] Comm. TT, No. 4/304. example 1.
[21] Comm.TT. No. 15/31.

> " ... frontier workers *who prove their status by submitting the form for frontier workers that is provided for by special agreements between Belgium and France,* are taxable on their (salaries) exclusively in the state of which they are residents..."[22]

On the basis of this reference to a frontier worker form in the substantive treaty provision itself, a Belgian frontier worker who had not filed that form for the income year concerned argued that the frontier worker regime should not be applied to his situation. Accordingly his employment income would be taxable in France and exempt in Belgium under the general attribution rule for employment income covered by the treaty. The Belgian tax administration did not agree with this position and considered that the frontier worker regime was mandatorily applicable notwithstanding the fact that the prescribed form had not been submitted.

The outcome of this debate was important because if the taxpayer's view were to prevail the application of the frontier worker regime would *de facto* be optional to the taxpayer: by knowingly not submitting the prescribed form, a taxpayer could at his option choose to avoid application of the frontier worker regime. This could be appealing to many Belgian frontier workers who would prefer to pay tax in the country of their employment rather than in Belgium.

The issue was first considered by the Court of Appeals of Mons which confirmed the position of the tax administration: the Court considered that the imperative nature of public order which is inherent to tax laws, and the fact that the DTCs merely define the relative taxing authority of the contracting states, were not compatible with granting a taxpayer the opportunity to opt for or against application of the treaty regime for frontier workers. This decision was overruled, however, in 1994 by the Supreme Court which held that the specific wording of the frontier worker provision in the DTC with France implies that when an employee does not file the application form prescribed by this provision, the frontier worker regime is not applicable.[23]

The Belgian tax administration finds the outcome of this Supreme Court decision unacceptable. Regulations have been issued stating that the ruling of the Supreme Court will not be followed for the time being and that current renegotiations of the treaty with France will be used to rule out any option for a frontier worker to choose in which country the employment income is taxable.[24]

2.3. Withholding taxes on dividends, interest and royalties

Treaty relief in the form of a reduction of, or exemption from, Belgian withholding taxes on Belgian-source dividends, interest or royalties is available at source or through refund of the excess tax initially withheld.

22 The special frontier worker form was abolished on the basis of EC Regulation No. 1612/68 of 15 October 1968. The Belgian and French tax administrations agreed to replace the old form by a new *ad hoc* application form which is to be filed annually (Comm. TT. No. 15/52).

23 Court of Appeals of Mons, 29 October 1993. *Le Courrier fiscal,* 1994, p. 281. Cass., 27 October 1994, Pas., 1994, I, 869.

24 Circular of 16 September 1996, Bull. Contr., 1996, p. 2129.

2.3.1. Relief at source

Relief at source is allowed generally with respect to royalties as well as with respect to dividends paid on registered shares and interest due on loans, registered securities and deposits, etc. With respect to dividends and interest paid on bearer securities, relief at source is allowed if the payment of the income is organised by the payer itself without using a bank as paying agent or intermediary.[25]

The application of relief at source is not mandatory and is always at the risk of the payer.

2.3.1.1. Application forms for treaty relief: foreign tax attestations

Treaty relief at source must be claimed using special forms issued by the Central Income Tax Administration. Separate forms are used for dividend, interest and royalty income ("276 DIV.-AUT", "276 INT.-AUT" and "276 R"[26] respectively). The same forms are used regardless of which treaty country is involved. Hence, in total only three different Belgian forms are used. The forms and the notices are freely available from the tax services designated in the commentary and apparently are also generally available from the tax authorities of the country of residence of the beneficiary.[27]

After completion of the form by specifying the income concerned and the identity of the payer and payee, the latter must obtain on the form itself an attestation of its tax residence and beneficial ownership from the tax authorities of its country of residence.

Thus, the eligibility for treaty relief is as a matter of routine established on the basis of the attestation obtained from the foreign tax administration directly on the application forms. The attestation is indeed not limited to a confirmation of the tax residence of the applicant but also acknowledges that to the best of the knowledge of the foreign administration the applicant duly claims beneficial ownership of the income concerned. In those cases where eligibility for treaty relief is subject to additional conditions (e.g. the condition of the income concerned being subject to tax in the recipient's country), the attestation from the foreign tax administration is extended accordingly.[28]

25 Comm. TT, Nos. 10/233 and 11/233. The tax regulations indicate that treaty relief at source with respect to dividends on bearer shares is only allowed where the shares involved are part of an important shareholding (without defining the concept of an "important shareholding"). In practice, however, relief is easily granted with respect to small shareholdings as well.

26 Under domestic tax law certain categories of royalties (royalty fees relating to intellectual property such as literary copyrights, patents, etc.) are not subject to the ordinary withholding tax for capital income *(précompte mobilier/roerende voorheffing)* but rather to a withholding tax for professional income *précompte professionnel/bedrijfsvoorheffing).* The form 276R is not used for claiming treaty relief for such royalties. An ordinary residence attestation (see section 2.1.1.2) and evidence that the treaty conditions are satisfied suffice (Comm. TT, No. 12/241).

27 The forms are trilingual (French, Dutch and English) and are accompanied by Explanatory Notices which summarise the essential rules as to their completion and processing (Comm. TT, Nos. 10/231, 11/231 and 12/231.241).

28 Comm. TT, Nos. 10/205-222.7. 11/204-207 and 12/203-206.

In the case of bearer securities, the application must be accompanied by documents which establish that the payee is the beneficial owner (e.g. by attaching the bank receipt acknowledging remittance by the payee of the relevant coupons).[29]

With respect to income earned by associations that have no separate legal personality, treaty relief is to be applied for by each member of the association individually.[30] Exceptions are limited to those cases where the association itself qualifies as a resident of a treaty country under specific provisions of a DTC. Examples include certain forms of personal companies which have no legal personality, US partnerships and trusts and the undivided estate of a decedent who was a resident of Finland or, under certain conditions, of the United States.[31] As to (European) economic interest groupings which have legal personality but are treated as tax transparent, the view of the Belgian tax administration is that treaty relief has to be applied for separately by each individual member of the grouping *pro parte.*[32]

2.3.1.2. Filing deadline

A very short deadline is imposed: the payee must provide the payer with the appropriate form, including the attestation from the foreign tax administration, within ten days after the income is paid or "attributed" whichever comes first. "Attribution" occurs as soon as the income is made available to the payee (e.g. a dividend is considered "attributed" as soon as the dividend is declared payable by the distributing company, even if not actually paid).

The Belgian tax regulations provide that the Belgian payer may check with its tax controller if it believes it necessary to verify that the payee has no permanent establishment or fixed base in Belgium to which the income is connected.[33] Once the payer is satisfied that the information on the form is correct, and completes its part of the form, it annexes the form to its own ordinary domestic withholding tax return (which it has to file within fifteen days after the income is paid or "attributed").

In principle, relief must be applied for with regard to each payment or attribution of income. However, with respect to periodic payments of income related to claims, loans or registered deposits, the payer may at its own risk file one return per calendar year.[34]

2.3.1.3. Use of different forms and procedures where relief is also available under domestic tax law

Tax regulations provide that the special forms for treaty relief should not be used where the relief provided for by a treaty is also available under a specific domestic

29 Comm. TT. No. 10/234.
30 Comm. TT, Nos. 3/27. 10/204.
31 Comm. TT, No. 4/127-128 and 132.
32 Comm. TT, No. 3/27. Reportedly, the evidence to be attached to individual applications of the members of an (E)EIG can be collective.
33 Comm. TT, Nos. 10/236. second paragraph, a. and 11/236.
34 Comm. TT, Nos. 11/235 and 12/236.

provision. In such case relief must be claimed through the relevant domestic form and procedure, rather than through the treaty relief procedure. Examples include the domestic exemption for interest paid by Belgian banks to foreign banks for their own account, interest paid by Belgian banks on deposits held by certain non-resident taxpayers, income on securities held on "X/N accounts", etc.[35]

This seriously complicates the Belgian relief procedures as a variety of different forms and specific filing procedures apply with respect to the various categories of relief available under domestic tax law. As a matter of principle, it is doubtful whether the tax administration has the right to disallow the use of the normal treaty relief procedure, where the relief sought is available under treaty law as well as under domestic tax law.

2.3.2. Treaty relief through refund

Refund of excess tax withheld can be claimed through the ordinary domestic tax protest procedure,[36] through the treaty relief procedure available under the mutual agreement provision of the DTC (see below under 2.5) or through a simplified procedure. The simplified procedure is the most expedient one and is generally used.

In the simplified procedure, the beneficiary of the income uses the same special forms designed for claiming relief at source. The beneficiary can claim refund of the excess tax withheld by filing the appropriate form (completed and with the necessary evidence attached) to a central foreigners' tax service in Brussels designated in the commentary as well as in the instructions accompanying the forms. Tax regulations allow for filing of an application for refund using the simplified procedure until three years following the calendar year in which the income was paid or attributed.[37]

On the basis of indications to be provided on the application form, reimbursement is made to the applicant, to its representative – which may be a financial institution or any other person – or into a specified bank account.[38] The application can be signed and filed by the representative only if a proxy from the beneficiary is provided. The proxy can be given on the form itself. The forms ask for the signature of the beneficiary to be legalised (unless the reimbursement claimed is less than BF 1,000), but this condition is applied leniently.

35 Comm. TT. Nos. 10/513 and 11/223-225 and 511-514.

36 Comm. TT. Nos. 10/231. 11/231 and 12/234.

37 Comm. TT. Nos. 10/235, 11/234 and the Explanatory Notice to form 276R.
The tax regulations do not specify the origin of this filing deadline. This deadline corresponds to the specific subcategory of the domestic claim procedure for *ex gratia* refund of art. 376, §3 ITC. The regulations apparently consider that the simplified procedure is a special application of this domestic claim procedure (a reference to the relevant art. 376. §3 ITC is found in the Explanatory Notice to form 276R). The legal basis for this position is. however, not clear.

The alternative domestic claim procedure for *ex gratia* refund of art. 376, §1 ITC would appear to be better justified. However, under this procedure the filing deadline would be three years as of 1 January of the calendar year in which the income was paid or attributed (and not as of 1 January of the following year).

38 Comm. TT, Nos. 10/232 and 11/232.

With respect to Belgian-source interest or royalties, the regulations provide that where the beneficiary of the income for some reason refrains from claiming treaty relief (e.g. because the beneficiary has no interest in obtaining a lower withholding tax since he benefits from a guaranteed income after deduction of any Belgian withholding tax), the payer of the income may also claim a refund of excess withholding tax on the basis of treaty relief. In such case the forms are filed by the payer directly with the Belgian tax administration which shall itself pass on the forms to the tax authorities of the other treaty country to obtain confirmation of the residence and beneficial ownership of the beneficiary.[39]

2.3.3. Claiming relief through a custodian or representative

Where a custodian intervenes in claiming treaty relief, it is supposed to act strictly as a representative. Accordingly, a custodian is to submit application forms as a proxyholder for each beneficiary that it represents. This implies that the attestations from the tax authorities of the beneficiary's country are still required for each individual beneficiary. The country in which the custodian is established does not matter at all. As noted above, the application form can indicate that the reimbursement is to be made to the custodian.

The tax regulations provide for some *ad hoc* derogations from this principle of filing separate applications for each beneficiary. One exception is granted to recognised French banks, which are allowed to file a collective application with respect to bearer shares and bonds which they hold in custody for their clients. This collective application (form "276 Coll.(F)") has to mention the identity and addresses of the customers involved but these need not be confirmed individually by an attestation from the French tax authorities The *ad hoc* procedure put in place provides for this collective application to be subsequently communicated from the Belgian to the French tax authorities.[40]

A second *ad hoc* derogation is granted with respect to royalties for artistic property rights which are paid by the Belgian national association for authors (the cooperative company SABAM) to the corresponding national institution of a treaty country. The regulations assume that the beneficiaries of such royalties are residents of the treaty country involved. Accordingly, SABAM can apply the treaty relief (i.e. normally full exemption from withholding tax) at source without any attestations being needed.[41] Royalties paid by SABAM directly to individual foreign authors are excluded from the derogation and must be processed according to the normal procedure.

2.3.4. Interest on tax refunds

The tax regulations do not specify within which period of time a refund of excess withholding tax must actually be reimbursed. The implicit principle seems to be

39 Comm. TT, Nos. 11/240 and 12/237.
40 Comm. TT, Nos. 10/246-248 and 11/239.
41 Comm. TT, No. 12/243.

that reimbursement should be implemented as soon as practicable. In practice the time needed may vary from case to case. Reportedly an average reimbursement occurs within one year from the filing of a refund claim. However, in cases where the eligibility for treaty relief is disputed or questioned, a much longer time period may apply as the Belgian tax administration stipulates that reimbursement will only be implemented after further auditing, possibly including consultations with foreign tax authorities, establishes the entitlement to treaty relief.[42]

Recently, the issue of whether interest is due by the Belgian state on reimbursements of excess withholding tax attracted a great deal of attention. As a matter of principle, the tax regulations provide that reimbursements of taxes on the basis of treaty relief will be granted interest under the same conditions as taxes reimbursed on the basis of domestic tax law.[43] Hence, the position is that treaty relief provisions do not independently grant the right to interest if there is no basis for interest to be paid under domestic tax law. In this respect, the traditional view of the Belgian tax administration is that reimbursements of excess withholding taxes do not give rise to interest.[44]

This traditional view has recently been challenged by several US shareholders following the entry into force of the new Protocol of 31 December 1987 between Belgium and the United States which reduced the treaty withholding tax rate for dividends on significant shareholdings from 15 per cent to 5 per cent. The Protocol was approved by the Belgian Law of 16 June 1989. However, the reduced withholding tax rate entered into force with retroactive effect as of 1 January 1988. In a message published in the Belgian State Gazette the tax administration had announced that interest would be granted with respect to taxes reimbursed on the basis of this retroactive effect.[45]

Subsequently, however, the Belgian tax administration changed its mind and applied its traditional view that no interest is to be granted on reimbursements of excess withholding taxes. This prompted several US multinationals to dispute the issue before the Belgian courts. At the time this report was drafted, the Supreme Court had already rendered decisions in a few cases. One case involved a claim for reimbursement of excess withholding tax applied for by the Belgian subsidiary which had distributed the dividend and withheld tax at the rate which applied before the Protocol entered into force. The Supreme Court ruled that the claimant (who was the payer of the dividend and technically claimed the reimbursement in its capacity as debtor of the dividend withholding tax), was not entitled to interest.[46] Following this decision, the tax administration issued com-

42 Comm. TT, No. 10/218.

43 Comm. TT, No. 25/24.

44 Art. 418 ITC provides that interest is due on reimbursements of "taxes". Art. 419 of the Code provides for several exceptions including the case of excess withholding taxes being reimbursed to a taxpayer who can credit the withholding taxes against his own tax liability. Interest, if due, is granted as of the month following the month the tax was paid. The current interest rate is 0.8 per cent per month (which corresponds to 9.6 per cent per year).

45 Belgian State Gazette of 21 March 1990; Circular No. Ci. R9 USA/405.873 of 30 March 1989.

46 Cass., 12 October 1995. *Monsanto Europe,* F.J.F.. No. 95/218. The Court ruled that the withholding tax constitutes only a form of tax "prepayment" applied on behalf of the beneficiary of the dividend and not a proper "tax" giving rise to interest upon reimbursement.

prehensive regulations on the issue confirming generally that no interest is due on reimbursements of excess withholding taxes.[47]

In the meantime, however, the Supreme Court rendered a decision in another case wherein the claim for reimbursement was made by the foreign beneficiary of the income. This time the Court ruled that interest is due on the reimbursement of excess withholding tax to the foreign beneficiary of the income where the latter is a non-resident taxpayer for which the Belgian tax liability is limited to Belgian withholding taxes to be withheld at source.[48] It appears from the ruling of the Court that it makes no difference whether the reimbursed withholding tax was paid voluntarily or forced upon the debtor of the income through a tax assessment. Consequently, this ruling of the Supreme Court may in principle apply to any reimbursements of excess withholding tax claimed on the basis of treaty relief by a treaty country resident of which the Belgian tax liability is limited to withholding taxes withheld at source.

However, a procedural obstacle arises if the refund is claimed through the simplified procedure described above under section 2.3. In that case, the granting of interest may be impeded by a domestic provision which disallows interest when the refund is granted after the deadline for filing an ordinary tax protest has expired.[49] Since an ordinary tax protest can be filed until 30 April of the year following the year in which the withholding tax was paid or assessed (with a minimum of six months from the date of payment or assessment)[50] this deadline can easily be passed before the refund is granted. This obstacle can be avoided by claiming the refund through the ordinary tax protest procedure (see below under 2.5.1.a), as was generally done with respect to refund claims filed on the basis of the retroactive entering into force of the new Protocol with the United States.

To date, the Belgian tax administration has not changed its position. Apparently, the administration is not willing to abide by the recent ruling of the Supreme Court and is waiting for the outcome of legal proceedings in other pending cases before reconsidering its position.

2.3.5. Foreign tax relief

Belgian residents earning income from a treaty country must follow the procedures provided for by that country to obtain appropriate treaty relief. The forms

47 Circular No Ci.D.26-479. 175 of 22 January 1996. The circular states that it makes no difference whether the claim for reimbursement is made by the Belgian payer of the income or by the foreign beneficiary of the income. It also specifies that it makes no difference whether the withholding tax was paid voluntarily or was the subject of a tax assessment in the hands of the payer of the income.

48 Cass., 24 October 1996, *Morgan Adhesive Corporation,* Rechtsk.Weekbl., 1997, p. 86, F.J.F., No. 96/274.

49 ITC, art. 419, 3°. In addition, if the simplified procedure is considered to be a special application of the specific subcategory of the domestic claim procedure for *ex gratia* refund of art. 376, §3 ITC (which appears to be the position of the tax regulations – see footnote 42), then interest is disallowed regardless within which deadline the refund is granted (ITC, art. 419, 2°).

50 ITC, art. 371.

to be used in that respect are listed and succinctly commented on in the commentary, and can be freely obtained at the central foreigners' tax office in Brussels. Apart from this the intervention of the Belgian tax administration is normally limited to issuing the appropriate attestations via the local tax offices which are instructed to comply with such requests.

With regard to the United States, the Belgian tax administration is also involved in the recovery of US tax relief unduly granted with respect to US-source dividends. The regulations indeed note that the IRS normally grants treaty relief at source merely on the basis of the beneficiary of the dividend reporting a Belgian residence without having this confirmed by the Belgian tax administration. Any intermediary which remits such dividend income in Belgium is obliged to withhold the balance of US withholding tax otherwise due unless the payee provides an appropriate residence attestation. The US taxes so withheld are to be paid to a central Belgian tax collector who transfers those amounts on to the IRS on a quarterly basis.[51] Reportedly, sizeable amounts of US taxes are collected through this mechanism.

As a further peculiarity, it may be noted that this system was extended to operate on a tripartite basis between the United States, the Netherlands and Belgium. Where US-source dividend income eligible for US treaty relief is paid by a Belgian intermediary to a resident of the Netherlands, the intermediary can refrain from withholding US tax provided the Dutch recipient submits the appropriate Dutch attestation evidencing the latter's eligibility for treaty relief under the US–Dutch Tax Treaty. A similar mechanism operates in the reverse case of a Dutch intermediary paying US-source dividend income to a resident of Belgium.[52]

2.4. The permanent establishment

2.4.1. Foreign permanent establishment of a Belgian resident enterprise

Where a Belgian resident enterprise considers that its presence in another treaty country constitutes a permanent establishment as defined in the applicable DTC, treaty relief in the form of an exemption in Belgium of the profits attributable to such permanent establishment is claimed by the enterprise on a self-assessment basis in its ordinary annual income tax return to be filed after the close of the relevant book year.

This claim is subject to the ordinary domestic audit and appeal procedures. Proof of treatment as a permanent establishment by the foreign tax administration would generally be submitted in such a case. No specific forms of proof are prescribed by the Belgian authorities. In case of a dispute with the local tax office, the issue can, at the initiative of the tax office or of the enterprise, be submitted to

[51] Comm. TT, No. 10/263. This system of recovery of US taxes by the Belgian administration is based on art. 2. §2 of the Law of 14 August 1972 which approved the DTC with the United States.

[52] Comm. TT. No. 10/263.9-10.

the Central Income Tax Administration, which if it considers it appropriate may start consultations with the foreign tax authorities. The enterprise can also initiate the mutual agreement procedure (see below under section 2.5).

Where the Belgian enterprise claims that its presence abroad does not constitute a permanent establishment, this position is equally to be taken in its ordinary annual income tax return. This position may result in a reduced Belgian tax liability if it achieves a direct deduction of the loss of the establishment from Belgian taxable income by avoiding having the loss set off first against profits of other permanent establishments.[53] The claim is subject to the same audit and appeal procedures as referred to above.

2.4.2. Belgian permanent establishment of a foreign enterprise

When a foreign enterprise has an establishment in Belgium, as defined by domestic Belgian tax law, it must file an annual income tax return for that establishment regardless of whether or not the establishment qualifies as a permanent establishment under the applicable DTC.[54] If the foreign enterprise claims that no permanent establishment exists under the DTC, this claim is to be made by filing a non-resident corporate income tax return and reporting no taxable income (the other information requested on the form, such as a detailed list of expenses should, however, be provided).[55]

The claim made in the return is subject to the ordinary domestic audit and appeal procedures.

There is a general practice of seeking prior confirmation of the absence of a permanent establishment by submitting the issue to the Central Income Tax Administration or the local foreigners' tax service of the area in which the branch is located (or is intended to be located). Routine confirmation requests are preferably processed through these local offices. In complex cases or when a disagreement persists, the Central Income Tax Administration usually intervenes.

2.5. Disputes and unresolved issues

2.5.1. Procedures under domestic law

When complaints or disputes arise regarding the handling of treaty claims in Belgium, a taxpayer may in the first instance make use of the two basic remedies available under Belgian domestic law:

(a) A tax protest may be filed with the appropriate regional director of income taxes up until the later of:

[53] Art. 75 R.D. implementing the ITC.

[54] A non-resident company cannot obtain a Belgian residence attestation for treaty purposes. However, if the company has a permanent establishment, the Belgian tax administration is reportedly willing to issue an *ad hoc* attestation confirming that the permanent establishment is subject to tax in Belgium and that it has the beneficial ownership of specified foreign-source income.

[55] Comm. TT, No. 5/05.

- 30 April of the year following the year in which the income tax was paid or assessed, or
- 6 months from the date of payment or assessment of the tax.

(b) A longer time period is available for introducing a claim for *ex gratia* refund with the tax administration. Such a refund claim can be filed until three years from 1 January of the year during which the income tax was assessed or paid. That refund claim, however is only allowed on the basis of specific, limited circumstances, including double taxation which is not in accordance with a DTC.

There is double taxation when two taxes are assessed on the same income, where such a result is excluded by a domestic legal provision or by a tax treaty.[56] The double taxation may be either legal or economic double taxation. Economic double taxation is however not in principle forbidden by Belgian DTCs: there is an obligation to take measures against economic double taxation only when the competent authorities reach an agreement to do so in a particular case. In most cases, then, the claim procedure for an *ex gratia* refund is of no use to prevent economic double taxation.

The taxpayer may appeal the decision taken under either of the procedures described above to the Court of Appeals. However, it is only possible to bring up new legal arguments upon appeal to the extent that they are based on a violation of the law or a violation of certain fundamental procedural rules. The losing party may appeal the decision to the Belgian Supreme Court for reason of non-conformity with a legal rule.

In Belgium, there is no ombudsman or other procedure available outside of the ordinary administrative or judicial channels for dispute resolution.

2.5.2. Mutual agreement procedure

2.5.2.1. General rule

As a general rule, a Belgian resident taxpayer which would like the Belgian competent authority to enter into discussions with the competent authority of another country, for the purpose of reaching agreement regarding the correct application of a DTC between the two countries to its situation, can introduce such a request to the local regional director. Such request can also be filed with the Minister of Finance or the head of the income tax administration, which then refer the case to the regional director.[57]

The Belgian tax administration takes the position, however, that a taxpayer may not request the initiation of the mutual agreement procedure in cases of economic double taxation on the grounds that such cases do not involve taxation not in accordance with the DTC.[58]

56 Comm. ITC, No. 376/10.
57 Comm. TT, No. 25/18.
58 Comm. TT, No. 25/51 a.f.

The availability of the mutual agreement procedure is not conditioned on the exhaustion of all remedies under Belgian domestic law. Further, it is not even necessary for a taxpayer to have received the assessment which confirms the double taxation not in accordance with the treaty. It is sufficient that the taxpayer can show that the double taxation is not only possible but rather probable.[59]

2.5.2.2. Statute of limitations for introducing requests

Most DTCs define a limited time period within which requests for the initiation of the mutual agreement procedure can be introduced. Usually, the period is two years and it ordinarily is calculated from the date on which the taxation not in accordance with the treaty is notified to the taxpayer or actually takes place (note that the limitation on requests under the treaty with France is only six months).[60]

There is no explicit limitation set forth in the Belgian DTC with Japan. The Belgian tax administration advises Belgian taxpayers to observe the statute of limitations of three years applicable to the claim procedure available under Belgian domestic law as referred to above under 2.1.[61]

2.5.2.3. Discretion of regional director and Central Income Tax Administration

The availability of the mutual agreement procedure is further limited by the discretion exercised by the local regional director in response to a taxpayer's request. The regional director may handle a request in several ways:

(a) He may decide that there is no legitimate basis for upholding the request and simply reject it.

(b) He may decide that the request is legitimate and handle the case unilaterally by adjusting the Belgian tax situation of the taxpayer (to eliminate the taxation which is not in accordance with the DTC).

(c) He may decide that the request is legitimate but that it is necessary to involve the competent authority of the other contracting state in which case he will submit a report to the Central Income Tax Administration to that effect.[62] On the basis of the report of the regional director, the Central Income Tax Administration makes a final decision whether or not to consult with the competent authority of the other treaty country.[63]

[59] Comm. TT, No. 25/16.
[60] Comm. TT, No. 25/16.
[61] Comm. TT, No. 25/15.
[62] Comm. TT. No. 25/19-22.
[63] Comm. TT, No. 25/20.

Résumé

Des commentaires exhaustifs publiés par l'administration fiscale belge fournissent un grand nombre d'informations et de conseils utiles pour les contribuables concernant les procédures à suivre en Belgique pour réclamer l'application de la convention.

Dans de nombreuses situations, l'application de la convention peut être demandée à l'administration fiscale belge sur la base de l'auto-imposition, ce qui est habituellement assez facile à effectuer.

S'agissant de la demande d'application de la convention par des non-résidents à l'égard des impôts anticipés sur les dividendes, intérêts ou redevances de source belge, le droit de bénéficier des dispositions de la convention doit être prouvé par une attestation qui peut être obtenue à titre individuel de l'administration fiscale du pays de résidence du bénéficiaire du revenu. Le fait de confier l'exécution des demandes à un curateur ne dispense généralement pas les bénéficiaires de cette obligation.

Une autre complication peut découler de la position de l'administration selon laquelle, chaque fois que le même niveau de dégrèvement peut également être obtenu sur la base d'une disposition fiscale belge, il conviendrait d'utiliser la procédure de dégrèvement belge correspondante, de préférence à la procédure conventionnelle générale. Le bénéficiaire étranger du revenu de source belge peut alors être obligé de se soumettre à toute une série de procédures de dégrèvement prévues par la législation interne belge.

Le remboursement du trop-perçu de la retenue à la source est généralement accordé dans le délai d'un an. Traditionnellement, il n'est pas accordé d'intérêts au titre de la période de remboursement. Toutefois, la jurisprudence récente semble accorder des intérêts lorsqu'un remboursement est demandé dans le cadre de la procédure spécifique d'une réclamation fiscale. A l'heure actuelle, cette jurisprudence n'a pas encore été reconnue par l'administration fiscale.

Le système général d'enregistrement de la Belgique applicable à toute personne séjournant sur son territoire aux fins de la délivrance d'une carte d'identité a une influence considérable sur la facilité avec laquelle un changement entre les statuts fiscaux de résident et de non-résident est reconnu en cas d'immigration ou d'émigration.

La disposition relative aux travailleurs frontaliers qui figure dans la convention de double imposition conclue entre la Belgique et la France offre l'exemple d'une règle conventionnelle positive incluant une référence à une formule de demande spécifique. Sur la base de cette référence, la jurisprudence belge a établi que si la formule de demande pertinente n'était pas déposée, le contribuable pouvait éviter l'application du régime de travailleur frontalier. Il s'ensuit que le régime de travailleur frontalier devient *de facto* optionnel pour le contribuable, ce qui n'était pas prévu par les États contractants. L'administration fiscale belge s'efforce d'éviter cette option *de facto* offerte au contribuable en renégociant la convention avec la France.

Zusammenfassung

Ein von der belgischen Steuerverwaltung herausgegebener umfassender Kommentar enthält viel hilfreiche Information und Anleitung über die Verfahren, die in Belgien zu befolgen sind, wenn Vergünstigungen im Rahmen eines Steuerabkommens beantragt werden.

In vielen Situationen können DBA-Steuervergünstigungen bei der belgischen Steuerverwaltung aufgrund einer Selbstveranlagung beantragt, ein normalerweise relativ einfaches Verfahren.

Personen oder Körperschaften mit Wohn- oder Firmensitz im Ausland müssen, wenn sie Quellensteuervergünstigungen für Dividenden- Zins- oder Lizenzgebührzahlungen in Belgien beantragen, ihre Anspruchsberechtigung durch eine individuelle Bescheinigung der Steuerverwaltung des Wohnsitzlandes des Zahlungsempfängers nachweisen. Die Beantragung durch Einschaltung eines Treuhänders befreit den Empfänger im allgemeinen nicht von dieser Verpflichtung.

Eine weitere Komplikation kann sich daraus ergeben, dass bei Vorliegen der Möglichkeit einer gleichwertigen Steuervergünstigung aufgrund einer innerstaatlichen Steuervorschrift das entsprechende belgische Verfahren anstelle der allgemeinen DBA-Erleichterung angewendet werden sollte. Der ausländische Empfänger von Einkünften aus belgischer Quelle muss sich deshalb unter Umständen mit verschiedenen belgischen innerstaatlichen Steuererleichterungsverfahren auseinandersetzen.

Zuviel gezahlte Quellensteuern werden im allgemeinen innerhalb eines Jahres rückerstattet. Zinsen auf die Erstattungsfrist werden üblicherweise nicht gezahlt. Aus Gerichtsentscheiden der letzten Zeit geht jedoch hervor, dass Zinsen fällig sein können, wenn die Steuerrückerstattung im Rahmen eines speziellen Steueranfechtungsverfahrens beantragt wird. Die Verwaltung hat allerdings bis heute diese Entscheide nicht anerkannt.

Das in Belgien für Zwecke der Ausstellung eines Personalausweises allgemein geltende System der Meldepflicht der im Landesgebiet anwesenden Personen hat einen wesentlichen Einfluss darauf, wie leicht oder schwer im Falle der Ein- oder Auswanderung eine Änderung des Status vom Gebietsansässigen zum Nichtansässigen von der Steuerverwaltung anerkannt wird.

Die Grenzgängerbestimmung im DBA zwischen Belgien und Frankreich ist ein Beispiel für eine materielle Abkommensbestimmung, in der auf eine bestimmte Durchführungsform Bezug genommen wird. Aufgrund dieser Bestimmung haben belgische Gerichte entschieden, dass Steuerzahler, die das entsprechende Antragsformular nicht ausfüllen, die Nichtanwendung der Grenzgängerregeln verursachen können. Damit wird das Grenzgängersystem *de facto* eine Option für den Steuerzahler, was von den Vertragspartnern nicht beabsichtigt war. Die belgische Steuerverwaltung versucht jetzt, diese *de facto* bestehende Wahlmöglichkeit für den Steuerzahler durch Neuverhandlung des Abkommens mit Frankreich zu beseitigen.

Resumen

La administración tributaria belga ha publicado comentarios exhaustivos, con amplia información y útiles consejos para los contribuyentes, sobre procedimientos a seguir en Bélgica para solicitar la aplicación del convenio (CDI).

En muchas ocasiones puede solicitarse la aplicación del CDI a la administración tributaria belga en base a la autoimposición, lo que es habitualmente bastante sencillo.

En la solicitud de aplicación del CDI por no residentes en retenciones sobre dividendos, intereses o cánones de origen belga, ha de probarse el derecho al beneficio de sus disposiciones mediante certificación que puede pedirse a la administración tributaria del país de residencia del beneficiario de la renta. Los beneficiarios han de cumplimentar este requisito aunque confían la ejecución de estas solicitudes a un depositario.

Puede aparecer otra complicación debida a que la administración considera que, siempre que exista el mismo nivel de desgravación en una disposición tributaria belga, hay que utilizar el correspondiente procedimiento belga de desgravación y no el general del CDI. El

beneficiario extranjero de renta de fuente belga tendrá entonces que someterse a los procedimientos de desgravación previstos por la legislación interna.

En general, el reembolso de ingresos indebidos por retención en la fuente se lleva a cabo en un año. Tradicionalmente, no se liquidan intereses por el periodo de reembolso. Sin embargo, la jurisprudencia más reciente parece conceder intereses cuando se solicita el reembolso en el procedimiento de reclamación tributaria. Hasta el momento, esta jurisprudencia no ha sido reconocida por la administración tributaria.

El sistema general de registro belga, aplicable a quienes permanezcan en su territorio para expedición del carnet de identidad, tiene considerable influencia en la facilidad con que se reconozcan modificaciones en los estatutos fiscales de residente o no en casos de emigración o inmigración.

La disposición sobre trabajadores fronterizos del CDI concluido con Francia es un ejemplo de norma de convenio positiva con formulario específico de solicitud. En base a esta referencia, la jurisprudencia belga ha establecido que si no ha habido interposición del pertinente modelo de solicitud, el contribuyente puede eludir la aplicación del régimen sobre trabajadores fronterizos. Así pues, este régimen se convierte en opcional para el contribuyente, situación que no previeron los Estados contratantes. La administración tributaria belga trata de evitar esta opción *de facto* del contribuyente y para ello está renegociando el CDI con Francia.