Delegation visit to Belgium - Tuesday 12 May

Mission report

Draft agenda

09.00 - 11.00 Experts Panel with the participation of:

- Jacques Malherbe (UCL)
- Axel Haelterman (KULeuven)
- Werner Heyvaert, Jones Day
- Wim Wuyts, Head of Tax – President of tax committee FEB-VBO and Hilde Wampers, Vice President Tax - Group Finance FEB-VBO
- Christophe Quintard, (spécialiste fiscalité pour le FGTB, former tax auditor)

Venue: Rue de Trêves 3 (Place du Luxembourg), 1050 Bruxelles

11.15 Departure to the Belgian Chamber (EP navette leaving from: Rue Wiertz)

11.30 - 13.00 Meeting with the Finance and Budget Committee of the Belgian Parliament

Venue: Belgian Chamber, Rue de la Loi , 1000 Brussels

13.00 - 13.50 Working lunch
Venue: Belgian Chamber, Rue de la Loi , 1000 Brussels

14.00 - 15.00 Meeting with Mr Steven Vanden Berghe, Head of the tax ruling service

Venue: Rue de la Loi, 24

15:15 Departure to the EP premises (EP navette)

Interpretation : EN, FR

TAXE COMMITTEE
ad hoc Delegation to Belgium
12 May 2015

Final list of participants

Members

Alain LAMASSOURE, Chair	EPP
Elisa FERREIRA	S-D
Michael THEURER	ALDE
Marisa MATIAS	GUE
Philippe LAMBERTS	Verts/ALE
Marco ZANNI	EFDD
Danuta HUBNER	EPP

Accompanying Members

Peter SIMON	S-D
Anneliese DODDS	S-D
Sven GIEGOLD	Verts/ALE
Marco VALLI	EFDD
Philippe DE BACKER	ALDE
Tom VANDENKENDELAERE	PPE

Political advisers

Erik DAUKSTS	PPE
Stine LARSEN	S-D
Luc ROCHTUS	ECR
Petra SOLLI	ALDE
Sinead NI TREABHAIR	GUE
Michael SCHMITT	Verts/ALE
Andrea CURRI	EFDD

Secretariat

Massimo PALUMBO	Head of Unit
Benoît WETS	Administrator

Interpreters

Brigitte ANTOINE
Cécile DUPONT
Maria FITZGIBBON
Candice RICHARDS

Press Officer

Ronnie KORVER

1. Meeting with stakeholders

Experts participating in the discussion:

- Jacques Malherbe (UCL)
- Axel Haelterman (KULeuven)
- Werner Heyvaert, Jones Day
- Wim Wuyts, Head of Tax – President of tax committee FEB-VBO and Hilde Wampers, Vice President Tax - Group Finance FEB-VBO
- Christophe Quintard, (trade union FGTB, former tax auditor)

Main findings:
Majority of experts consider that the tax ruling practice in Belgium existing since 2002 works very well. It is a necessity for business to get legal certainty. The tax ruling service has no discretion in the interpretation of the law. It has however discretion in the interpretation of factual elements.

Competition on tax issues is very hard and global. Belgium needs to be attractive; Otherwise business will leave. There are companies leaving Belgium because of the high level of taxation. Competition is not limited to Europe but goes beyond it. The representative of the trade union complained about double tax Treaty shopping and said that MS concluded some Treaties "sur mesure" in order to favour specific companies.

Questions addressed to experts mainly focused on notional interests, Country-by-Country-Reporting (CBCR), publication of tax rulings, network of bilateral treaties for double taxation,the methodology for the calculation of effective versus statutory tax rates and the excess profit ruling practice (= Belgian company may exclude from its taxable income those profits that would not have been realized in a "stand alone" situation). One expert said that the Italian system of notional interests seems to be better than the Belgian one. He referred to a study made by TAXUD.

Some suggestions made during the discussion:
- Setting up of an European convention for double taxation (instead of myriads of national bilateral tax treaties)
- Common European rules on transfer pricing
- Need for a good dispute resolution mechanism in case MS disagree on transfer pricing. The EU arbitration convention does not work (8 years to get a result)

2. Meeting with the Budget and Finance Committee of the House of Representatives.

The Belgian Parliament has been very active on the issue of aggressive tax planning issues with several hearings (journalists, tax authorities, academics and Minister) in the recent months.
The Committee of Finance supports efforts to change the rules, despite diverging views on how to progress. It wants to keep the level playing field. According to the majority, Belgium needs to keep its attractive tax climate in order to attract foreign investments in the country. When reforming its tax rules, Belgium must not be naïve. Tax competition must however

remain fair. Some MPs belonging to the opposition confirmed that the belgian system of tax rulings is not transparent and more democratic control should be introduced.

The Committee of Finance supports the CCCTB as a solution to most of the problems at stake and could, with time, consider the option of moving towards harmonistaiton of rate even if far from feasible at this stage.The Belgian Parliament is happy to cooperate with the TAXE committee and will attend the interparliamentary session of 17 June.

3. Meeting with the Head of tax ruling office: Mr Steven Van den Berghe

Participants:
Steven Van den Berghe,
Véronique Tai, former chair of the tax ruling office (until 1/5/2015)
And the other members of the tax ruling office.

How does the tax ruling office work?
The tax ruling office is an autonomous body which takes binding decisions for tax authorities. The body was created by a law of 2002. Before taking a decision, the central administration is consulted but the final decision lies in the hands of the tax ruling office. The office is composed of 6 officials from the tax adminstration for a mandate of 5 years. Advanced tax rulings are available for anyone and cover all types of taxes. Tax rulings have normally effects for 5 years. No tax ruling can be provided if there is not enough economic substance in Belgium or if the rulings is linked to a non cooperative country (currently no country listed as non cooperative). Tax rulings are made public although anonymized. The Minister of Finance annually sends a report on tax rulings to the Parliament and the members of the tax ruling office are heard at the Parliament. The officials confirmed that they apply the Belgian rules and that they are following the OECD and EU standards in terms of exchange of information.

Questions addressed to the tax administration mainly focused on excess profit rulings and whether the Belgian tax authority informs other tax authorities of the benefits that are not taxed in Belgium, the possible room for manoeuvre of the tax ruling office, the concept of economic substance, countries that are listed as tax havens by Belgium, and on the capacity of the tax ruling office to defend its position when confronted with very detailed studies on transfer pricing.

Main findings:

- The tax ruling office has no room of manoeuvre to interpret the law. It has room to interpret factual elements. Every request on transfer pricing must be very detailed and comply with OECD rules. The tax ruling office acknowledges that these are quite flexible or vague.
- When Belgium makes a tax ruling, it requests the company to give all existing tax rulings applicable to it. Belgium has however not spontanuously sent its tax rulings or information related to it to other Member States in line with its EU law obligations.
- Excess tax profit ruling (= Belgian company may exclude from its taxable income those profits that would not have been realized in a "stand alone" situation) is not a common practice (63 rulings in 10 years). It has however been impossible to know the amount of taxable income concerned. The criteria used to calculate the "Belgian" tax base were not given. This regime is currently under investigation from DG COMP (state aid procedures) so the officials could not answer all questions from MEPs. Belgium has suspended its activity in this field while waiting the conclusions of the investigation. In case of such ruling, other countries potentially concerned are not informed

(there is not such obligation in the Belgian law), hence the situation of double non taxation.

- Rules on how to estimate the economic substance in Belgium are relatively unclear despite that there are minimum criteria established by the tax administration (no letter box company).