Registered office doctrine and Belgian taxation

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The real seat doctrine is now a thing of the past for Belgian companies. With the introduction of the new Companies and Associations Code (CAC), the Belgian legislator has decided to follow what is common practice in many other European countries, by opting for application of the registered office doctrine.

The radical reform of corporate law necessitated amendment of tax regulations as well, as the legislator deemed it unfair that these would change dramatically as a result.

Situation prior to the CAC: real seat doctrine

According to the old Companies Code, companies were governed by the corporate laws of the country where they carry out their main activities or conduct their administration – the 'real seat' of their operation.

This means that in the past, a company's place of incorporation did not matter under Belgian law. The determining factor was whether or not the company exercises its main activities or administration in Belgium. If that was the case, the company would be governed by Belgian corporate law.

This made Belgium a less than obvious choice for foreign companies.

Situation according to the CAC: registered office doctrine

Belgium could no longer stay behind and eagerly looked across its borders for inspiration. It found that the Netherlands, for instance, managed to turn their corporate law into a significant export product – many foreign corporations found their way to our northern neighbour.

It so happens that the Netherlands applies the registered office doctrine. According to this doctrine, the corporate law applicable in the country where the company has its registered office is the law governing the affairs of the company.

With the introduction of the new CAC, Belgium has also made the resolute choice for the registered office doctrine. That is good news, as it provides freedom and flexibility for all.

However, there is no reason to become all enthusiastic yet, as the planned online company registration option has not yet materialised. As a result of this administrative flaw foreign corporations could still decide to skip the Belgian option.

Taxation and the real seat doctrine

A company is a Belgian resident for tax purposes and hence taxed in Belgium for its worldwide profits if its main operation or administrative seat is located in Belgium. This is in line with the real seat doctrine. And it does not change.

Ergo: the real seat doctrine is and remains the prevailing doctrine for tax purposes.

As a result of the introduction of the CAC, companies are now governed by the corporate law of the country where they have their registered office. Consequently, one may no longer assume that a company that has its registered office in Belgium by definition is subject to Belgian corporate tax. After all: the law requires effective management of the company from Belgium.

In principle, a company must also have legal personality in order to fall under the corporate tax system. However, a special provision already taxes foreign bodies without legal personality that make a profit in Belgium, if their form is similar to a company with legal personality under Belgian law (section 227(2) of the Belgian Income Tax Act of 1992).

New legal presumption with double evidence to the contrary

As stated earlier, one may no longer assume that a company that has its registered office in Belgium by definition is subject to Belgian corporate tax. This implies that the tax authorities would have to assess each case separately. That is simply undoable.

To solve this issue, the legislator introduced the legal presumption with double evidence to the contrary. This works as follows: save for evidence to the contrary, any company that has its registered office in Belgium is deemed to have its effective management in Belgium and therefore is deemed to be a resident for tax purposes.

This presumption can be rebutted by demonstrating that the company 1) has its real seat in another state and 2) is a resident of this other state for tax purposes.

The accounts must follow suit

The legislator had to take measures to ensure that companies that have their registered office abroad and therefore are governed by foreign laws, can be taxed in Belgium (new section 320/1 of the 1992 Income Tax Act). Consequently, every permanent office of such companies is now required to keep accounts and draw up financial statements according to Belgian law, unless they are exempt. The financial statements must be attached to the corporate tax return, unless they already have been published.

Conclusion

As a result of this reform Belgium no longer lags behind. Our corporate law is now ready to welcome more foreign companies to Belgium. However, whether we have enough of a competitive edge in terms of taxes remains to be seen.

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