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EU Direct Tax Newsalert

CJEU judgment on the Belgian tax exemption concerning income from savings deposits

On 8 June 2017, the Court of Justice of the European Union ("CJEU") rendered its judgment in *Van der Weegen and Pot* (C-580/15). This case, which concerns the tax treatment of Belgian as opposed to non-Belgian savings deposits, was referred to the CJEU by the Court of First Instance of Bruges. The Belgian tax authorities had refused to apply the tax exemption applicable to interest income received from Dutch savings deposits held by individuals, claiming that the conditions for the exemption laid down in Belgian law were not fulfilled.

The tax exemption is applicable without distinction to income from savings deposits held with banking service providers established in Belgium or in another Member State of the EEA insofar as the foreign savings deposit system is comparable to the Belgian system. However, to the extent that this system imposes conditions on access to the Belgian market on service providers established in other Member States, there can be an infringement of the freedom to provide services.

Background

In 2013, the CJEU already established that because the tax exemption was only applicable to deposits held with a Belgian bank, the system was discriminatory and violated the freedom to provide services (C-383/10). As a result, the exemption was extended to credit institutions established in the EEA provided that the non-Belgian deposits comply with similar conditions as the Belgian deposits. For instance, the remuneration received on the savings deposits must consist of basic interest and a fidelity premium. However, it appears that this method of remuneration is specific to the Belgian banking market.

CJEU judgment

The CJEU held that the Belgian tax exemption has the effect of discouraging Belgian residents from using the services of banks established in other Member States and from opening or

keeping savings accounts with those latter banks, since the interest paid by those banks cannot benefit from the tax exemption, in particular because of the required remuneration method. Secondly, the Belgian legislation effectively discourages holders of a savings account with a bank established in Belgium, which complies with the exemption conditions, from transferring their account to an EEA bank whose savings accounts do not meet those conditions.

Therefore, the CJEU ruled that the Belgian legislation is capable of constituting an impediment to the freedom to provide services to the extent that it imposes conditions on access to the Belgian banking market on service providers established in other Member States. However, the CJEU added that whether or not this is the case, is a matter for the referring national court to verify.

The CJEU also ruled that consumer protection cannot be invoked as a justification, as the tax system at issue does not comply with the principle of proportionality.

Next steps

It is up to the national court to decide whether the Belgian tax exemption imposes conditions on access to the Belgian banking market on non-Belgian service providers. This implies that it is uncertain whether the freedom to provide services is effectively violated in this case, although it can be expected that the national court will rule in favour of the taxpayer. In such a case, Belgium will need to reform its exemption regime for savings deposits again.

Takeaway

In anticipation of the final outcome of this case, Belgian individuals holding savings accounts in an EEA Member State may consider applying the interest exemption when filing their personal income tax return. The maximum interest threshold for assessment year 2017 (income year 2016) amounts to EUR 1.880. Interest income from qualifying savings deposits exceeding this threshold is taxable at a rate of 15%.

