Belgian Cayman Tax in a nutshell

The Cayman tax is a set of rules in the Belgian Personal and Legal Entities Income Tax Code on transparency and taxation of distributions of foreign legal structures (hereafter 'wealth structure'). These are trusts on the one hand, as well as not or low-taxed foreign companies and foundations, such as the Luxemburg SPF, Liechtenstein Anstalt/Stiftung and companies established in a.o. Jersey, BVI, Hong-Kong and Delaware.

Cayman Tax was enacted in August 2015 and was significantly amended end of 2017. An overview of the last changes, mainly targeting distributions by trusts, multi-layered structures and (insurance) contracts can be found in our article in Fiscale Actualiteit, 2017/34, also published on our website.

Important modifications through new Royal Decrees

Execution of Cayman Tax was, as of the beginning, largely dependent on Royal Decrees enumerating the wealth structures in scope of Cayman Tax. As part of the continuous monitoring of the functioning of Cayman Tax, these Royal Decrees will now be amended. Of course, the further legislative process is to be followed for confirmation and further analysis of the new decrees.

Key changes are the following:

- Aim to include 'Private institutions for collective investment' in the scope of Cayman Tax, this to the extent that participations rights are held by one investor or several 'connected' investors. This modification mainly serves to include, 'without doubt', the Luxembourg Sicav-Sif structures, however without specifically referring to this investment structure. Further analysis will have to assess the impact for other investment structures[1];
- The Royal Decrees will no longer explicitly mention types of wealth structures that are in scope of Cayman Tax (e.g. 'Luxembourg SPF'), but will rather refer to the general definition in the law linked to the taxation level of the wealth structure. This new approach should avoid diplomatic conflict and allow a more flexible approach of in scope wealth structures. Mainly for EEA-entities, the new Royal Decree will be a game changer by introducing a taxation level of "less than 1% in comparison to a Belgian taxable base". Whilst most of the EEA-countries have (corporate) income tax regimes comparable to the Belgian regime, and with nominal tax rates significantly higher than 1%, this amendment can have far reaching consequences. If e.g. a foreign jurisdiction foresees in a less stringent participation exemption regime in comparison to the Belgian one (e.g. no participation condition of 10%, as is the case in a.o. Cyprus), the wealth structure might not qualify as 'sufficiently taxed' for Cayman Tax Purposes.
- So-called 'hybrid entities' are targeted, meaning entities which are – according to regular income tax rules – not tax transparent from a Belgian point of view, but are treated tax transparently in the resident state of the wealth structure. Reference is made to the Luxembourg Société en Commandite Simple. A similar stipulation existed already in the current form of Cayman tax, but is now expanded so that also 'hybrid entities' obtaining income outside of Belgium (e.g. worldwide portfolio income) will be in scope.

Entry into force

The new rules will enter into force with retroactive effect, as of January, 1, 2018. For movable and professional withholding tax, the rules will apply as from the first day of the month after which the new Decrees are published in the Belgian Official State Gazett.

[1] Note that tax transparency of Cayman Tax does not apply if the wealth structures obtain income from a genuine economical activity, which is however interpreted in a narrow way by the legislator and Belgian Ruling Office.