



efc briefing

legal and fiscal

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Belgium introduces tax effective cross-border giving

Outline

On 31st December 2009 the “Moniteur Belge” (official gazette) published the law of December 22, 2009 (*Loi portant des dispositions fiscales et diverses*). Part of this law concerns the income tax deductibility for donations or gifts to the so called “recognised institutions.”¹ The law now states that donations to qualifying domestic institutions or to similar institutions from another member state of the European Economic Area, which are recognised on a similar manner (“*ou aux institutions similaires d'un autre Etat membre de l'Espace économique européen qui sont agréées de manière analogue*”) will be tax deductible. Non-resident receiving organizations within the EEA should be considered as comparable to a Belgian institution and should be licensed ‘in a similar manner’ in their country of residence, in order to generate tax relief for the donor.

Several Member States have already amended their respective laws in the wake of the “Persche”² ruling of the ECJ, the most recent one being France. The following seven other EU countries have also introduced tax effective giving to public benefit organisations, including non-resident organisations: Netherlands, Poland, Slovenia, Finland, Denmark, Bulgaria and Luxembourg. Germany is also on the verge of introducing tax deductibility for cross-border donations, having issued a law proposal in mid-December 2009.

The EFC welcomes this overall European trend and wishes to recall the responsibility of national legislators to provide for an enabling environment for foundations, taking into account the European reality. It has always called for a more favourable environment for public-benefit foundations and their funders, including in a cross-border context. In 2003, the EFC produced its “Fundamental Legal and Fiscal Principles for Public Benefit Foundations”, which were translated into a “Model Law for Public Benefit Foundations in Europe”, that aims to influence positively the development of new foundation laws as well as the revision of existing laws at national level. In those documents the EFC suggests that companies and individuals should receive tax incentives with respect to donations made to resident and foreign foundations engaged in activities of public benefit.

¹ Gifts to qualifying organisations (i.e. charities that are operating in specific areas and which have been recognised by royal decree), including foundations are deductible from the taxable base within certain limits. Currently, individual donors can benefit from income tax deductions for cash donations up to 10% of taxable income, with a maximum of 319,580 euros. Corporate donors can also benefit from deductions for cash donations up to 5% of the taxable income, with a maximum of 500,000 euros,

² The case deals with a legal victory at the European Court of Justice (ECJ) in January 2009 for German donor, Hein Persche, who won income tax relief on a donation to a Portuguese public benefit organisation. The European Commission is currently challenging those national tax laws, which only provide tax incentives for giving to local public benefit organisations. There are a series of infringement procedures going on. On the European Commission website, information can be found on all cases, in which the procedure has officially started. The EFC has been informed that 21 Member States have been contacted regarding their tax treatment of cross-border donations. See EFC briefing on the Persche ruling: <http://www.efc.be/EUAdvocacy/EU%20Communiqu%20%20Briefings/befc0908.pdf>.

Action Point

The EFC will continue to keep its members informed about future foundation law developments. For more information, please contact eu@efc.be. Useful contacts regarding developments in Belgium are: Ludwig Forrest, King Baudouin Foundation - www.kbs-frb.be and Mr Francis Houben, Legal & Tax Management SPRL - www.legal-tax-mgt.com.