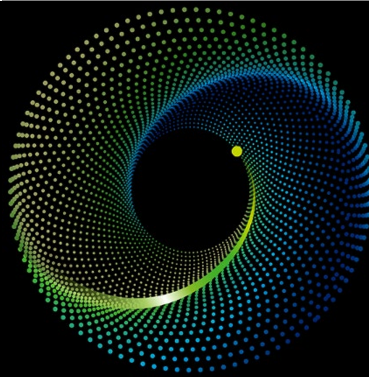
Deloitte. Deloitte. Legal

Belgium | Deloitte Tax | Deloitte Legal - *Lawyers* bv | 13 October 2022



Tax Controversy Alert
Belgium

Draft bill would extend investigation and assessment periods from tax year 2023

On 3 October 2022, the Belgian Federal Government introduced a draft bill containing various tax and financial provisions to the Chamber of Representatives. The government is seeking through the bill to implement the "Second Action Plan for a coordinated anti-fraud policy" launched by the minister of finance and the bill includes a wide range of tax measures, primarily affecting procedural aspects.

The primary aim of the bill is to extend tax investigation, assessment, objection, and retention periods to better align them with international standards, simplify the tax procedure, and increase their enforceability. New penalties for obstructing a tax investigation also would be introduced.

The bill is expected to be adopted by the Chamber of Representatives shortly with its provisions taking effect from various dates as specified in the bill once enacted via publication in the official journal. Amendments to the investigation, assessment, objection, and retention periods would enter into force as from tax year 2023.

This alert addresses the most important proposed procedural changes with respect to direct taxes.

Extension of investigation, assessment, objection, and retention periods

The amendment of the investigation, assessment, objection, and retention periods is the primary focus of the draft bill's procedural measures.

Assessment periods

The most notable changes are those relating to the assessment periods. In all cases, the assessment period starts from the end of the relevant financial year.

The **three-year** assessment period would be retained for situations when the tax administration wishes to amend a tax return filed on a timely basis. When a taxpayer either fails to file or files a late return, a new extended **four-year** assessment period is proposed.

According to previous media reports, the government also had intended to create a **10-year** assessment period for "complex tax returns." This intention apparently has evolved and the draft bill proposes two different periods, a **six-year** period and a **10-year** period. The six-year period would apply when the tax return includes certain international elements (e.g., transfer pricing documentation, payments to tax havens, or relief for foreign tax). Such returns are deemed "semi-complex." A 10-year period is foreseen for "complex" tax returns. A return is deemed complex when it involves the use of legal constructions, hybrid mismatches, or controlled foreign companies.

When a return contains one of the three elements necessary to be deemed complex, the tax administration could use the six- or 10-year period to amend any element of the return. The bill aims to reduce the impact by not allowing certain "easily auditable" disallowed expenses to be taxed within these new periods (e.g., nondeductible car expenses or nondeductible reception expenses). However, there are numerous elements that are equally easily auditable but remain liable to taxation in the new extended periods (e.g., depreciation expenses and general professional expenses).

The assessment period for tax fraud is extended from seven to **10 years**.

Investigation and retention period, and notification of simplified income tax fraud investigation

Linked to the modification of the assessment periods, the draft bill also proposes modified investigation periods, with a parallel investigation period for each new assessment period. The tax administration would be able to conduct an investigation for four years when a tax return is either not filed or filed late; for six or 10 years when the tax return is semi-complex or complex, respectively; and for 10 years in the case of tax fraud. The tax administration would be able to apply the extended investigation periods to semi-complex or complex returns without prior notice to the taxpayer.

The so-called "**fraud notification**" would be necessary to apply the extended investigation period in the case of tax fraud and is likely to be the most controversial proposal. Under the current regime, before the extension of the investigation period, the tax administration must notify the taxpayer "accurately" of "the indications of tax fraud." The draft bill aims to simplify this and proposes that it would be sufficient for the tax administration to "give notice of fraud suspicion and of its intention to apply this extended period." This is a further erosion of taxpayers' procedural rights, since assessments during the fraud period could no longer be annulled on procedural grounds, as stated in the explanatory memorandum. The "simplified" prior notification would be obligatory and if not provided, the assessment issued following the investigation would be invalid.

The **retention period** for which taxpayers are required to retain documentation also would be extended to **10 years** to ensure that a taxpayer still has all relevant documentation when potentially subject to a 10-year period of investigation and assessment.

Objection period

In order to "compensate" for the extension of the investigation and assessment periods, the draft bill also proposes to extend the taxpayer's objection period from six months to one year. In practice, the relevance of this extension probably would be limited, since the payment period has not been correspondingly extended. Taxpayers wishing to file an objection notice could

therefore be forced by the collector to do so sooner in order to suspend collection of the tax.

Current regime versus proposed regime

The table below summarises the current and proposed investigation, assessment, objection, and retention period regimes. In each case, the period starts from the end of the relevant financial year:

Relevant procedure	Current regime	Proposed regime
General assessment period	Up to 30 June of the following tax year	Up to 30 June of the following tax year
Amendment of the tax return	3 years	3 years
Late return or failure to file a tax return	3 years	4 years
Semi-complex tax return	Not applicable	6 years
Complex tax return	Not applicable	10 years
Fraud	7 years	10 years
Retention period	7 years	10 years
Investigation period	3 or 7 years plus indication of tax fraud notification	3, 4, 6, or 10 years plus suspicion of tax fraud notification
Objection period	6 months	1 year

Penalty payment in case of tax investigation obstruction

The tax administration would be entitled to impose a penalty payment when the taxpayer, or a third party, obstructs a tax investigation (in the broad sense of the term). This would include noncompliance with the provisions regarding an onsite audit of the books or a request for information, or the refusal to allow a tax visit to take place.

Moreover, the draft bill clarifies that penalty payments also may be imposed where when the tax investigation is carried out at the request of a foreign tax authority, to facilitate the imposition of penalties in such cases.

The tax administration would be required to obtain approval from the court to impose a penalty on the taxpayer. This ensures judicial oversight. The claim would be brought before the tax chambers of the Court of First Instance. Cases would be dealt with similarly to preliminary relief proceedings and heard as soon as possible. The court's ruling on the penalty payment would be considered as a final judgement on the merits of the case.

Entry into force

The draft bill does not provide for a specific date of entry into force for the **penalty payment provisions**. Therefore, these rules will enter into force on the 10th day after the law's publication in the Belgian official journal.

The **amendments to the investigation, assessment, objection, and retention periods** would enter into force as from **tax year 2023**. The draft bill further clarifies that the provisions regarding the objection period would apply as from **1 January 2023**.

The bill also provides for a transitional regime for tax years prior to tax year 2023 which would remain subject to the current legislation. Therefore, the new or amended terms could not be applied to tax years preceding tax year 2023, even if the statute of limitations had not expired. For example, for tax year 2022, the assessment period in the case of tax fraud would be a maximum of seven years, despite the fact that the statute of limitations would not have expired at the time the new legislation (including the 10-year assessment period in cases of tax fraud) entered into force.

This would create an important degree of legal certainty for taxpayers which would be welcomed, having regard to the significant impact the proposed changes could have on taxpayers.

Next steps

This draft bill is expected to be adopted shortly, since the fight against tax fraud is seen as important and is high on the legislator's agenda. Once adopted by the Chamber of Representatives, the bill will need to be published in the official journal.

Some may question whether the provisions of the draft bill are proportionate to its aim. After all, many of the extended assessment and investigation periods are directly linked to obligations imposed on taxpayers by the legislator. No distinction is made, however, between taxpayers who comply with the legislation, making complete and transparent declarations, and those who do not. This seems unusual for legislation supposedly intended to combat tax fraud.

The proposed changes indicate that in the coming years, taxpayers should anticipate more tax audits and sanctions in the form of penalties, resulting in it becoming even more important to prepare thoroughly for a possible tax audit.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Philippe Dedobbeleer | Global Business Tax | pdedobbeleer@deloitte.com, + 32 2 749 57 81
- Frédéricq Jacquet | Global Employer Services | frjacquet@deloitte.com, +32 2 600 65 29
- Annick Visschers | Deloitte Legal | Tax Litigation | avisschers@deloitte.com, + 32 2 800 70 72
- Filip Smet | Deloitte Legal | Tax Litigation | fsmet@deloitte.com, + 32 2 800 70 64

For general inquiries, please contact:
bedeloittetax@deloitte.com, + 32 2 600 60 00

Be sure to visit our websites:
Deloitte Tax Belgium Home | Deloitte Legal Belgium Home

Stay tuned with the latest developments:

Tax News and Insights | Legal News and Insights | Deloitte Academy

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), , its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides industry leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175 plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s more than 345,000 people worldwide make an impact that matters at www.deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

Deloitte Legal - *Lawyers* BV/SRL in Belgium

Deloitte Legal - *Lawyers* BV/SRL is part of a privileged multidisciplinary cost-sharing association with Deloitte Belastingconsulenten BV/SRL.

© 2022 Deloitte Belgium

Subscribe | Unsubscribe