

*Belgian Draft
Tax Amnesty
Bill of 26
September
2003:*

*Windfall or
Pitfall ?*

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Belgian Draft Tax Amnesty Bill

Agenda

- *Which taxpayers ?*
- *Which taxes ?*
- *What are the effects ?*
- *What are the penalties ?*
- *How will it work in practice ?*
- *Interaction with existing unofficial administrative practice*
- *Interaction with money-laundering legislation*
- *Conclusions*

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■ *Which taxpayers are covered ?*

- } Belgian resident and non-resident individuals
(exclusion of companies)*
- } Who are the beneficiaries of foreign bank account(s)
(EU, non EU, current, savings, securities account(s), ...)
(exclusion of safes)*
- } With investment (money and/or securities) placed there prior
to 1 June 2003*
- } And who effectively repatriate their investment in 2004 to
account(s) of Belgian banks especially recognised by the
Belgian Banking and Finance Commission*

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■ *Which taxes ?*

} All taxes and/or social security contributions due on the investment prior to the repatriation are forgiven

} Exclusions

- ← If investment comes from a laundering operation or from an offence listed in article 3 of the Law of 11 January 1993; or*
- ← If an audit has already taken place, or of which the taxpayer has been informed in writing;*
- ← Taxes relating to professional income with respect to tax years 2002 to 2004*
- ← Inheritance duties relating to deceases after 31 December 2002, and prior to that if no valid tax return has been submitted or for which no delay has been obtained*

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■ *Effects of one-shot return and levy*

- } Definitive discharge of all taxes (including interest and penalties) due by the “declarant” before the repatriation and by the persons (individual or companies) from who the money or securities have been obtained or which have “attributed” them*
- } Cannot serve as an indicia (of fraud) for future audits, for reporting tax frauds nor for exchanging information*

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■ *Effects of one-shot return and levy*

} Discharge of prosecutions

- ← For certain criminal offences [tax fraud, forgery, receiving stolen properties (“recel”) and for money laundering offences (“recel élargi”)]*
- ← Exclusion for others (e.g. “abus de biens sociaux”, article 492bis of the Belgian Criminal Code)*

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■ *Penalty rates*

- } 6% if money/securities are invested (qualifying investment to be defined by separate Royal Decree) during a period of 3 years; or*
- } 9% (default penalty rate)*

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■ *How will it work in practice ?*

- } Taxpayer files a one-shot return with a recognised bank or broker*
- } Return is kept and numbered by the bank*
- } Payment of the one-shot levy to the bank*
- } Bank forwards the one-shot levy to the tax authorities*
- } No reporting of the identity to the tax authorities*
- } Nominative and numbered certificate issued by the bank to the taxpayer*
- } Certificate is proof towards courts and public authorities*

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■ *How will it work in practice ?*

} Bank files a list of taxpayers to the Money Laundering Office (CETIF), containing:

← Name of taxpayer

← Certificate number

← Repatriated amounts

} Tax authorities have no access to this list, but can request whether a specific certificate is authentic

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■ *Recognised banks or brokers*

- } Only Belgian banks or brokers or Belgian branch of EU bank or broker*
- } Request for specific recognition by Banking & Finance Commission (CBF)*
- } CBF verifies adequacy of:
 - ← Organisation*
 - ← Internal audit*
 - ← Compliance function**
- } Recognition within 1 month after request*

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■ *Tax assessment periods*

- } Normally 3 years*
- } In case of fraud (intentional): 5 years*
- } In case evidence demonstrates that revenues have not been declared in one of 5 years preceding the discovery of this evidence: assessment within 12 months after discovery*
- } Example:*
 - ← Discovery of fraud on 1 March 2004*
 - ← Tax authorities can go back till 1 January 1999*
 - ← Taxation possible till 28 February 2005*

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■ *Existing unofficial administrative practice (Com.IR 444/8)*

- } Spontaneous regularisation*
- } Prior to any request of the tax authorities*
- } No application of tax increase (normally 50% for fraud)*
- } In practice: 0%, 10% or 20% increase ?*
- } Conditions:*
 - ← Origin of money must be disclosed*
 - ← Only for "grey money "*
- } Minister of Finance: practice will be abandoned next year*

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■ Existing unofficial administrative practice

} Example:

← EUR 500.000 on Luxembourg deposit since 1/1/1998

← Interest rate: 4% (EUR 20.000 per year)

← Not reported interest: EUR 20.000 x 5 years = EUR 100.000

← Withholding tax: 16,05% (i.e. 15% + 7% communal tax)

← WHT: $100.000 \times 16,05\% = 16.050$

← Tax increase: $16.050 \times 20\% = \underline{3.210}$

← Tax liability: 19.260

→ 3,9% of capital versus 6% or 9%

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■ *Money-laundering legislation*

} *Law of 11 January 1993*

} *Scope: illegal money or assets from*

← *Terrorism*

← *Organised crime*

← *Drug trafficking*

← *Illegal trade in weapons, goods or merchandise*

← *Clandestine labour trafficking*

← *Human beings trafficking*

← *Exploitation of prostitution*

← *Illegal use or trafficking of animal hormones*

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■ *Money-laundering legislation*

} *Scope: illegal money or assets from (continued)*

- ← *Trafficking in human organs or tissues*
- ← *Fraud against the financial interests of the EU*
- ← *Serious and organised tax fraud, using sophisticated mechanisms (e.g. VAT carrousels, QFIE fraud)*
- ← *Corruption of public officials*
- ← *Stock exchange offence or illegal public attraction of savings*
- ← *Financial swindle, kidnapping, robbery, extortion*
- ← *Fraudulent bankruptcy*

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■ *Money-laundering legislation*

} Identification of:

← clients (name & address)

← transactions above EUR 10.000 (for occasional clients)

} Reporting of suspect transactions to Money-Laundering Office (CETIF)

} If serious indications of money-laundering exist, CETIF informs prosecutor

} These rules remain applicable in case of tax amnesty

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■ *Conclusions*

} *Minister of Finance:*

Expected revenues: EUR 500 mio – EUR 1.000 mio

→ Total repatriation: EUR 5.500 mio – EUR 11.000 mio

} *Expensive for “grey money”*

} *Cheap for “black money”, BUT*

← *Many exclusions:*

- income of 2002-2003

- assets on Belgian accounts

- safes & bearer securities

- foreign trusts or holdings

- organised crime & serious tax fraud

← *Legal security ?*

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■ *Conclusions*

} Savings Directive:

← No exchange of information with Luxembourg and Austria till at least 2011

← Only WHT: 15% → 20% → 35%

} Conform with EU legislation ?

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Questions ?

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