



PROCESSEMENT VAN DE DOCUMENTEN

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Administration of Fiscal Affairs

Mr Tizhong LIAO

International Taxation Department
State Administration of Taxation

PEOPLE'S REPUBLIC OF CHINA

Your letter of

Your references

Our references
2010/0469

Annex(es)

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME – ARTICLE 26 (EXCHANGE OF INFORMATION)

Dear Mr Liao,

Article 26 of the Agreement we signed on 7 October 2009 aims at implementing the international standard on exchange of information. During the negotiation preceding the signature, the Belgian delegation insisted on departing from the scope of Article 26 of the OECD Model.

The modification proposed by the Belgian delegation aimed at avoiding that the taxes imposed by the Belgian federated entities (3 Regions and 3 Communities) be included in the scope of that Article. The consequence of such inclusion would have been that our Agreement should have been approved not only by the Belgian federal Parliament but also by the parliaments of each federated entity.

You have been so kind as to accept the Belgian proposal. It has therefore been agreed that paragraph 1 of Article 26 covers taxes of every kind and description imposed on behalf of the Contracting States.

In principle, this wording excludes from the scope of the exchange of information the taxes imposed by the political subdivisions and local authorities of both our States.

However, our Council of State (which, in Belgium, is an advisory body that has to deliver an opinion on each draft Act, including on those introducing treaties into Belgian law) has considered that this wording – in this Agreement as well as in similar treaties concluded with other States – also covers the taxes imposed in Belgium by its federated entities.

Additional information concerning this letter may be obtained with :

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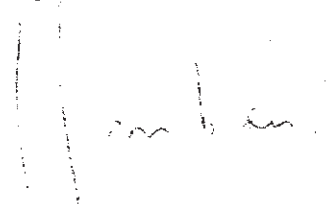
Our Council of State actually considers that, for the application by Belgium of Article 26, the term "*Contracting State*" encompasses not only the State itself but also the political subdivisions and local authorities, even though these are not expressly mentioned. As a result of this interpretation, paragraph 1 of Article 26 applies to the Belgian federated entities, and our Agreement becomes what we call a mixed treaty, i.e. a treaty which falls within the authority of the Belgian federal Government and of one or several federated entities.

It follows from the foregoing that, at least in Belgium, Article 26 covers taxes of every kind and description imposed on behalf of the Contracting States or of their political subdivisions or local authorities. It also follows that, notwithstanding the wording used in paragraph 1, our Agreement will have to be approved by the Parliaments of the Belgian Regions and Communities as well as by the federal Parliament.

However, this reading of Article 26 of our Agreement by the Belgian Council of State constitutes a unilateral interpretation. Therefore, on the Belgian side, we need to know if you can agree with this interpretation, which totally conforms to the purpose of the international standard on exchange of information, if not to the OECD wording.

If such is the case, this bilateral interpretation will have to be formalized, as soon as our Agreement enters into force, by a mutual agreement between the competent authorities within the framework of Article 25 of our Agreement.

Sincerely,



Jacques Gombeer
Auditor general
Direction 3 / International – Income taxes
Administration of Fiscal Affairs
Federal Public Service Finance

Requ B 28/7/11



国家税务总局

STATE ADMINISTRATION OF TAXATION
THE PEOPLE'S REPUBLIC OF CHINA

Mr. Jacques Gombeer
Auditor General
Direction 3 / International – Income Taxes
Administration of Fiscal Affairs
Federal Public Service Finance

11 July 2011

Re: Interpretation of Article 26 (Exchange of Information) of China-Belgium Double Taxation Agreement (DTA)

Dear Mr. Jacques Gombeer

With reference to your letter dated 30 May 2011, I would like to express my full agreement with your understanding or interpretation of Article 26 of the DTA. It could be taken as a bilateral consensus that, even though the wording of paragraph 1 of Article 26 is different from that of the OECD Model, the term "Contracting States" here encompasses not only the States themselves but also the political subdivisions and local authorities thereof.

Sincerely yours

LIAO Tizhong
Deputy Director General
International Taxation Department
State Administration of Taxation, P. R. China