

Our Attorney Authors



Alain Huyghe
Partner
Tax

✉ Email



Julie Permeke
Senior Associate
Tax

✉ Email



Marie Krug
Associate
Tax

✉ Email

It looks like Controlled Foreign Corporation (CFC) regulation is taking over the tax world - what should our clients know about the Belgian Cayman tax?

The Cayman Tax could indeed be considered as a type of CFC regulation. In a nutshell, under the Cayman Tax certain offshore entities, such as trusts and tax haven companies will be tax transparent and the income they realise will hence be directly taxable in the hands of the settlor.

Moreover, the distributions made by the targeted entities will also be taxed in the hands of the recipient. Here, there will be certain exceptions, of course, to avoid double taxation. The Cayman Tax is a tax due in the personal income tax, and in the legal entities tax, and hence not in corporate income tax.

What type of structures are typically targeted by the Belgian Cayman tax?

The Belgian Cayman Tax basically targets three types of structure.

First and foremost, you have the so-called trust type structures, where you have an ad-hoc estate that is managed by a third party under certain guidelines as mentioned in the trust deed.

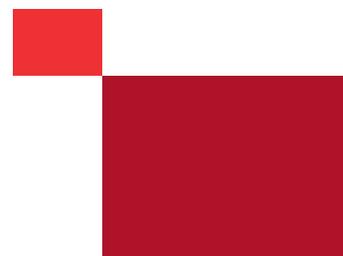
Secondly, you have the tax haven companies, but it is much broader than that. Those are legal entities that are either not subject to any income tax or that are subject to an effective tax rate of less than 15% of their taxable base as computed according to the Belgian tax rules. We have two Royal decrees that have been issued and that contain a blacklist of those tax haven companies in the EEA and outside the EEA.

Thirdly, we have the contract type structures where one transfers assets or shares of the first two types of structures into a contract, typically a type of life insurance contract and also that is targeted by the Belgian Cayman tax. That being said, you have of course certain safe-harbours for public UCITS for example, or pension funds.

What about the recent extension of the blacklist with entities targeted by the Belgian Cayman tax? Can you elaborate on this?

Yes, in fact both lists were extended. As to the EEA list, before 2018, the Cayman tax only targeted entities which were explicitly mentioned on this list. These were the Liechtenstein Anstalt & Stiftung and the Luxembourg SPF & foundation - well, the latter actually never existed.

Since 2018, all EEA entities could potentially be targeted by the Cayman tax under the so-called 1% rule. This rule targets entities which are not subject to corporate income tax in their state of residence, or are subject to corporate income tax at a rate of less than 1% of their taxable income, and this is computed based on Belgian tax rules.



Thankfully, a carve-out was provided for certain investment companies - basically, the alternative investment funds and UCITs.

In addition thereto, de facto dedicated investment companies, as well as foreign hybrid entities, are also targeted.

As to the non-EEA list, this list thus far mentions 66 entities, such as the Delaware LLC. This list was also extended, and since 2019, the Cayman tax is also applicable on, on the one hand, investment funds if its shares or rights are held by one person or several related persons; and on the other hand, foreign hybrid entities.

It goes without saying that this measure should be taken into account when setting up a foreign investment fund if one is targeting Belgian investors, as they might not be able to defer taxation on the income realized by an accumulating fund.

Surely Belgian minority investors that have no control or even a say in an offshore investment fund should not be worried about this Cayman tax?

Unfortunately, also Belgian minority investors should take into account the Belgian Cayman tax. This is due to the fact that there are no exceptions made for minority investments, and to the fact that both the notion "settlor" and the notion "legal construction" or "chain construction" are defined very, very broadly, without any reference to control of the settlor in a legal construction. This means that the Cayman tax could potentially also apply on minority investments with the difficulty, of course, for the Belgian investor to obtain timely and sufficient information from the fund itself.

To give you an example, when a Belgian-based investor creates a BVI company that holds a portfolio of minority investments, the Belgian Cayman tax could not only come into play at the level of the BVI company, but also at the level of those minority investments, provided of course that they themselves qualify as a legal construction.

Is it all bad news then?

Well, under the current personal income tax regime, capital gains realised on shares are still tax-exempt in Belgium (with certain exceptions of course). Taking this into account, an investor could use the tax transparency under the Cayman tax to its advantage, if the strategy of the fund it invests in is to generate capital gains, rather than to receive dividend or interest income. With certain planning in place with regard to the timing of the distribution, the investor could then invoke the exemption on capital gains realised on shares, rather than to be taxed at the 30% rate on the distributions received.

That being said, it's clear that the Cayman tax is currently overshooting its original purpose, however, we do not expect that the legislator will reign in the regime any time soon. This is, for example, demonstrated by the investigation and assessment period that has been prolonged to ten years when it comes to anything related to Cayman tax. That's unusual because the normal assessment periods in Belgium is three years, and seven years in case of tax fraud.

So that's to say that Belgian-based investors should just really be aware of this Belgian Cayman tax regime, and take it into account with respect to their foreign investments.

The Private Banking resource explores the Belgian Cayman tax and its possible implications in further detail in each of the sections listed below. For your free trial access or to learn more about the resource, contact link@bakermckenzie.com

[Wealth Planning Concerns - Foreign Investment](#)

[Wealth Planning Strategies - Use of Trusts](#)

[Country Tax System - Sample Tax Scenarios](#)

[Tax Planning Strategies - Tax Planning with Trusts](#)