POSITION PAPER ON THE ADVERSE CONSEQUENCES OF THE DRAFT BILL TO IMPROVE TAX COMPLIANCE

December 19, 2023

AmCham Belgium is deeply concerned about the potential adverse consequences that a draft bill to improve tax compliance may have for multinational groups operating in Belgium. AmCham Belgium calls for a thorough impact analysis and requests that the proposed changes be reconsidered.

The Belgian Government is currently discussing a new draft bill with proposed changes as part of a plan to combat tax fraud. While the draft bill is intended to improve tax compliance and the efficiency of administering and collecting taxes, it is feared that legitimate business activities may be affected. With this position paper, AmCham Belgium would like to draw attention to the potential consequences for multinational groups operating in Belgium:

- Negative effect on (regional) headquarters: The interest withholding tax exemptions for qualifying holding companies and finance companies provided for by the Royal Decree are one of the few remaining positive measures to maintain (regional) headquarters of multinational groups in Belgium, ensuring flexible access to debt funding for their activities and acquisitions. The draft bill proposes to eliminate all exemptions in related-party situations (new article 266 Income Tax Code, ITC). This would unreasonably affect financing for existing activities and investments. Going forward, it would raise funding costs for future activities and investments, and could practically cut off (regional) headquarters in Belgium from financing obtained at the level of the parent company or at the level of finance companies elsewhere in the group.
- Legitimate transactions potentially affected by the proposed anti-abuse provision: Any extension of the anti-abuse provision should be compatible with the tax certainty that companies need in order to make business decisions. On the basis of the draft bill, any transaction (or series of transactions) leading to the non-application of a legal provision that creates a tax could potentially be treated as abusive and could potentially trigger unanticipated tax disputes and liabilities (new article 344 ITC). It is feared that the proposed extension falls short of safeguarding the rights of taxpayers, as guaranteed by the constitutional principles of legality and non-discrimination. Furthermore, as the new rules would apply to tax benefits obtained as of FY2023 (assessment year 2024), they would *de facto* be retroactive to the extent they also apply to tax benefits derived from past transactions. As a result, legitimate business investments of multinationals and other taxpayers in Belgium could be affected. It should be confirmed that taxpayers can continue to request a tax ruling to obtain legal certainty regarding the application of the anti-abuse provision.

- **Obligation to provide information from foreign group entities:** Belgium should create a safe and stable business environment for multinational groups operating in Belgium. The draft bill provides that the Belgian tax authorities can ask Belgian group entities to provide information from foreign group entities, including annual accounts, tax returns and board reports of foreign group entities (new article 315 ITC). This may include confidential information. The draft bill exposes Belgian subsidiaries to sanctions if they fail to obtain the information. However, this wrongly assumes that such information from foreign group entities is readily available to the personnel of Belgian group entities. Finally, the proposed rule comes down to a circumvention of the rules of territoriality.

For the reasons set forth above, AmCham Belgium considers there is a **significant risk** that the proposed measures would increase the financing costs of (regional) headquarters, adversely affect legitimate business activities, and undermine the stability of the business environment in Belgium. AmCham Belgium deems it absolutely necessary to carry out a thorough **impact analysis** to identify the potential effects on multinational groups operating in Belgium. AmCham Belgium calls on the Federal Government to reconsider these proposed measures and the other measures included in the draft bill, and to propose **alternatives** which would not be detrimental to legal certainty for taxpayers and the investment climate for investors.

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About AmCham Belgium

Founded in 1948, the American Chamber of Commerce in Belgium (AmCham Belgium) is a dynamic non-profit organization dedicated to improving business and investment opportunities for the US-Belgian business community. Supported by more than 400 member companies, AmCham Belgium plays a pivotal role in an evolving business environment by focusing on three key areas: advocacy, networking, and knowledge-sharing. To learn more about AmCham Belgium, visit www.amcham.be.