IsFin Meeting
May 12, 2011

Belgian legal and tax framework

Islamic Finance in Belgium and its potential for future

Introduction

Reasons for potential interest in Islamic Finance

- Immediate short-term reasons: need for liquidity
- Long-term reasons: interest for an alternative participating finance

Belgium, a *Sharia-friendly* legal and tax environment

- Common principles
- Adequate general legal environment and favorable tax regime

Practical implementations

- Financing public authorities (State regional and local authorities) and State-owned companies projects
- Financing of assets owned by public authorities (State, regional and local authorities) and by State-owned companies
- Real-estate financing and remunerated savings accounts for individuals
- Tax planning and tax engeneering for individuals and companies

Belgium concentrates a large Muslim fast growing population



Possibility to attract important investement from foreign countries with large Muslim community some without a particularily shariah friendly environment (ex : India) and from other Muslim countries.

Neutrality of the State as regard to religions, without being atheistic

Rapid development of a Muslim middle class. Permanent establishment in Belgium.

Encourage the involvement of the Muslim community into the local economy v/ keeping unproductive cash or sending money to or investing in their country of origin. This is facilitated by the fact that the muslim population is concentrated in Brussels and some other few towns.

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Islamic Finance: an alternative ethical source of financing



Simplicity, practicality and transparency vs. complexity and opacity

Long-term financing: matching maturity of long-term investment

Participative financing in the performance of the underlying assets though asset backed or asset based finance instead of derivative products..

Wish of some investors for ethical, transparent, understandable and safe investments, as well for the understanding of the global effect of their investments.

Attraction for non banking financing via adapted and innovative financial schemes.

Enhancing tax planning and tax engeenering through sharia compliant structures.

Success of the DLU (tax amnesty) : increased arrival of cash in Belgium within the following years and wish of the investors to diversify their investments in a safer and transparent way.

Belgium: A *Sharia*-friendly legal and tax environment

Adequate general legal structures



Existing legal structures suitable to Islamic finance concepts:

Ijarah Leasing regime applicable to moveable assets or real estate assets

Murabaha Accountancy rules which allows to spread the capital gain over the years for real estate. No taxation on various circumstance of the capital gains

Sukuk Issuance of participative bonds and « certificat fonciers ». Long standing practice

Attractive tax environment

Musharaka facilities to implement such technique through the use of reduced tax transfer between co-owners under certain conditions.

Mudharaba existence of « société en commandite simple » and « société en commandite par action »

etc



Outside these existing structures: freedom to contract subject to:

Compliance with Belgian rules of public order

Respect the tax law. Belgium has an interesting approach to tax engeneering and allows in general the use of structures for tax purposes.

Possibility to apply for tax ruling, by which the Belgian tax authorities can inform the taxpayer in a binding way the way their will interpret and apply the law for a specific operation.

Belgium: A *Sharia*-friendly legal and tax environment

No dedicated laws but a friendly tax regime



1. No taxation on capital gains by individuals on the sale of portfolio and real estate assets under certain conditions (! transfer tax upon sale of real estate)
2. No taxation on the capital gain made by companies on the sale of shares under certain conditions.
3. Limited transfert tax (1%) between partners owning together from origin a real estate proprety, under certain conditions (degressive Musharaka)
4. Very low registration tax on constitution of some real estate rights (emphyteose and superficie) : 0,2 %
5. The existence of the Real estate certificates by which bonds are issued by a company owning a real estate (or any other asset including « real estate rights » such emphytéose, superficie and usufruit, among others as well as movable and intagible assets) which give the right to the holders of certificate to receive the income produced from the real estate (or any other asset) and the capital gain upon the sale or any other similare operation. Such « participating income » is considered as an « interest », is fully deductible by the issuer and is taxed at a reduced rate by the holder of the certificate. Very similar to a Sukuk (asset based)

Taxation of *Murabaha* profit

No assimilation of *Murabaha* profit realized to interest payments BUT possibility to obtain a ruling to spread the taxation during the life of the repayment. No need to change the law to that end.

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