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Real Estate Taxation for EU Employees - Belgian & International law principles -

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Conference Cycle - Save the dates -



Seminars in English

Belgian and international inheritance
(civil and tax aspects)

Gifts in an international context
(civil and tax aspects)

Real estate in a crossborder context
(Belgian & international tax aspects)

Seminars in French

Successions dans un contexte international
(aspects civils & fiscaux)

Donations dans un contexte international
(aspects civils & fiscaux)

Immobilier belge dans un contexte international
(aspects civils & fiscaux)

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Agenda

- ❑ Impact of Protocol #7
- ❑ Introduction to Belgian real estate taxation
 - ❑ When does it apply?
 - ❑ How is real estate located in Belgium or abroad taxed in Belgium?
 - Upon purchase
 - Upon rental by an EU official
 - Upon sale
 - Upon gift / inheritance
 - ❑ Latest developments in 2022-2023
- ❑ Introduction to real estate taxation in a cross-border context
- ❑ Examples of real estate taxes in other EU Member States
- ❑ Cases



Fiscal Privileges of EU Employees - Protocol No. 7 -



Protocol on
Privileges and
Immunities
(art. 12 & 13)

Active EU official
+
Non-working spouse
(conditions)
+
dependent children
(conditions)

Retired EU Official


Taxes
concerned?
Situations
covered?

Remarks:

- some taxes are not covered: registration fees, gift tax, property tax, VAT, etc.
- One does not choose one's tax residence // Article 13 of Protocol 7 (CJEU, 17/6/1993)

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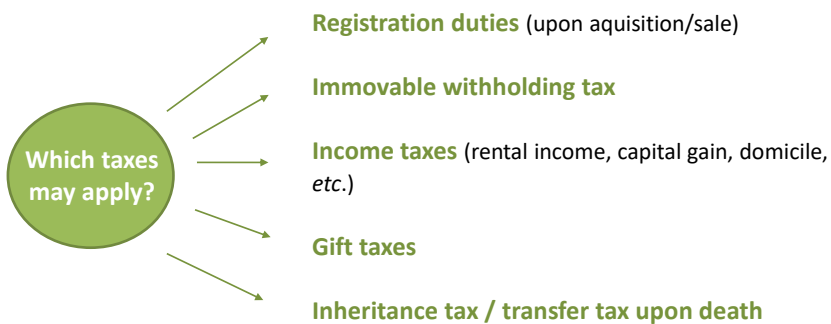


Belgian real estate taxation - Principles -

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Belgian law - Real estate taxation -



Gift and inheritance tax aspects are covered in our other seminars

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Belgian income tax law - Acquisition of a Belgian real estate -



☐ Registration duties

- ✓ **Purchase/sale:** 10%, 12% or 12.5% depending on the Region where the property is located
 - Taxable base: purchase price or market value (if higher)
 - Tax rebates?
 - Reduced rates?

New in 2023:

1. Increase of tax allowance in Brussels to 200.000 € for a first home + possibility of an additional allowance of €25,000 per improved energy class (1/4/2023)
2. (Proposed) new progressive tax allowance in Wallonia between €20,000 (if property above €500,000) and €40,000 (if property below €350,000) (summer 2023?)

- ✓ **Sharing-out:** 1% or 2.5% depending on the Region where building is located

Belgian income tax law - Acquisition of a Belgian real estate -



☐ VAT

- Rate: 21% (instead of registration fees)
- Specific situation: sale of a new house
- Optional regime: choice of the seller

☐ Other (non-tax) aspects to be taken into account when purchasing?



New renovation requirements in Flanders (1/1/2023)

- Obligations to improve the "EPB" for purchasers of "energy-intensive" properties (classes E and F): upgrade to EPB "D" at least within 5 years of acquisition (subject to conditions)
- valid in principle for all transfers of full ownership (except succession, partition, etc.)
- fines between €500 and €200,000

Belgian law - Immovable withholding tax -



□ “Cadastral income” (C.I.)

- Fictitious rental value attributed to each property by the Belgian tax authorities
- Used to determine the notional amount of reportable property income

□ Immovable withholding tax

- Property tax due each year
- Lump-sum determined based on the indexed C.I. multiplied by a coefficient

Indexed C.I. x coefficient (1.25 WALL - 2.25% BXL - 2.5% FL) + provincial and municipal cents

- Tax rebates / exemptions available in some cases

Belgian income tax

- Occupation/rental of a Belgian property -



A Belgian tax resident owns real estate in Belgium

□ If occupied by the owner (domicile)

- ✓ Exemption of the main residence for income tax purposes
- ✓ Not to be declared
- ✓ IWHT due

□ If used as a secondary residence (not rented)

- ✓ Taxable base = indexed C.I.¹ + 40%
- ✓ Non-indexed C.I. to be declared
- ✓ IWHT due

□ If rented to a private individual for residential purposes

- ✓ Taxable base = indexed C.I.¹ + 40%
- ✓ Non-indexed C.I. to be declared
- ✓ IWHT due

¹ Coefficient d'indexation 2021 = 1,8630

Belgian income tax



- Occupation/rental of a Belgian property -

A Belgian tax resident owns real estate in Belgium

- ❑ If rented to a company or to a private individual using it for commercial/professional purposes
 - ✓ Taxable base = effective rental income *minus* lump-sum deduction for expenses
 - Reporting obligation: gross rental income + other rental benefits
 - ✓ IWHT due
- ❑ If rented to a company or a private individual using it partly for commercial/professional purposes and for residential purposes (mixed use)
 - ✓ Breakdown of revenues to be declared
 - ✓ IWHT due

Foreign property income: Tax treatment in Belgium/abroad?



A Belgian tax resident owns real estate abroad or a foreign tax resident owns property in Belgium (or elsewhere)

- ❑ Tax treatment of rents, capital gains, etc. generated by properties abroad
 - ➔ First, check if there is a **double tax treaty** in place
 - ➔ In general, the DTT will attribute the right to tax to the **country where the property is located**
 - ➔ In **country of tax residence**: *exemption* (subject to progressivity) OR *tax credit*
- If a **foreign tax resident** owns **property in Belgium**
 - ✓ Tax filings required in Belgium (exception)
- If a **Belgian tax resident** owns **property abroad** (eg. retired EU Official in Belgium):
 - ✓ Exemption with progression method in Belgium (often of no effect)
 - ✓ A *revenu cadastral* must be obtained and declared in Belgium

Foreign property income: Example of DTT between UK-BE (1987)



ARTICLE 23 - Elimination of double taxation

1. Subject to the provisions of the law of the **United Kingdom** regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (...):

a) **Belgian tax payable under the laws of Belgium (...)** on profits, income or chargeable gains from sources within Belgium (...) shall be allowed as a **credit against any United Kingdom tax** computed by reference to the same profits, income or chargeable gains by reference to which the Belgian tax is computed;

(...)

2. In the case of **Belgium**, double taxation shall be avoided as follows:

a) Where a resident of Belgium derives income, not being dividends, interest or royalties, which is **taxed in the United Kingdom** in accordance with the provisions of this Convention, **Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.**

(...)

Foreign property income: New reporting obligation (2021)



□ New since this year: attribution of a Belgian C.I. to foreign properties

↳ **Old tax base:** actual rental income/rental value (if not rented) - foreign taxes - lumpsum costs (40%)*

↳ **New taxable base:** *cadastral income "à la belge"* + indexation + 40%

↳ How to determine this cadastral income?

1. **Historical method:** net normal rental value in 1975
2. **Comparison points method:** comparable properties
3. **Reconstitution method:** normal market value in 1975 x 5.3% capitalization rate
4. **Deduction method:** current normal market value x correction factor x 5.3% capitalization rate



Foreign property income: New reporting obligation (2021)



❑ Correction factors (back to 1975)

Acquisition year	Correction factor	Acquisition year	Correction factor	Acquisition year	Correction factor
1975	1,000	1991	4,549	2007	11,203
1976	1,084	1992	4,972	2008	11,698
1977	1,180	1993	5,403	2009	12,212
1978	1,279	1994	5,783	2010	12,678
1979	1,384	1995	6,242	2011	13,124
1980	1,504	1996	6,703	2012	13,653
1981	1,687	1997	7,133	2013	14,040
1982	1,920	1998	7,538	2014	14,377
1983	2,186	1999	7,882	2015	14,622
1984	2,414	2000	8,276	2016	14,739
1985	2,688	2001	8,730	2017	14,798
1986	2,967	2002	9,180	2018	14,901
1987	3,224	2003	9,625	2019	15,006
1988	3,479	2004	10,023	2020	15,036
1989	3,806	2005	10,431		
1990	4,133	2006	10,782		

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Foreign property income: New reporting obligation (2021)



❑ Reporting obligation:

Spontaneous declaration

- Taxpayer who acquires or sells a property : 4 months from the date of acquisition
- Significant change/improvement of the property: 30 days

❑ What? brief description of the property + property details + current market value

→ if current market value unknown: purchase price + year of purchase + cost of works + years of completion

❑ Penalty?

Administrative fine €250 to €3,000

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Foreign property income: New reporting obligation (2021)



Possible claim against CI notified by the tax administration?

- ↳ Proposing a different CI to the tax authorities (Cass. Sept '21)
- ↳ deadline: 2 months after the notification

Belgian tax rules - Sale of Belgian real estate -



Resident OR **non-resident** who sells a property in Belgium

- Tax treatment of capital gains
 - ✓ Sale within a certain period of time (within “normal management of private assets”)
 - E.g. capital gain on house sold within 5 years: 16.5%
 - Exemption for domicile (if domicile for more than 12 months prior to sale)
 - ✓ Taxation if capital gain realised outside the scope of “normal management of one’s own private estate” or in case of “speculation”
 - Special rate: 33%
 - Criteria based on case-law / examples
 - ✓ Taxation if capital gain realised in the frame of a professional activity
 - Belgian personal income tax (prog. rate) + social contributions




- Reporting obligations for non-residents -

A non-resident owns real estate in Belgium

- Immovable withholding tax?
- Not rented building?
- Rental income earned?
- Registration of the lease?
- Capital gains?
- Attestation 'Article 12'

Real estate: recap of tax reporting obligations in Belgium



Tax residence in Belgium	Tax residence abroad
<p>→ <u>Worldwide income taxable in Belgium (IPP)</u></p> <ul style="list-style-type: none"> ✓ All Belgian tax benefits (e.g. tax-free portion of € 9,270 on 2022 income) ✓ Benefit of applicable DTTs for foreign source income ✓ Mention that FE with exempt income (Article 12) 	<p>→ <u>Belgium-sourced income taxable in Belgium (INR-pp) (exceptions)</u></p> <ul style="list-style-type: none"> ✓ Foreign source income ≠ declare ✓ Tax benefits not necessarily applicable ✓ Mention that FE with exempt income (Article 12) <p>/!\ If only real estate income in Belgium: exemption from declaration if taxable base < €2,500</p> <p>/!\ What about reporting obligations in the State of residence?</p>
<p> Reporting deadline : 30 June (paper) or 15 July (online) (with exceptions)</p>	<p>Reporting deadline : Form available in September</p>

Taxation of foreign income - A few examples -



Real estate taxation in other Member States - A few examples -



- Use
 - Not rented
 - Rented
- Sale (capital gain)
 - Building
 - RE company
- Transfer duties
- Gift tax
- Inheritance tax
- Wealth tax

Practical cases

Practical case 1

A Czech EU Official is married with a Portuguese EU Official.
Both spouses are based in Brussels (recruited in Prague & Lisbon)
They own a house (domicile) in Brussels worth €600,000 (C.I.
€4,000). They rent out 1/3 of the house for €12,000/year.

Any tax filings in Belgium?

Any income tax to be paid in Belgium?

Any property tax due in Belgium?

Any tax filings in the country of tax domicile under Art. 13?



A Polish active EU Official is married with a retired French EU Official.

They live together in Brussels and were both recruited in Paris.

They own an **apartment** (domicile) and a **flat** (rented out) in **Brussels**. They also own a **vacation home in Nice**

Which revenues should be reported and/or taxed in Belgium?

Which revenues should be reported and/or in France?

Which revenues should be reported and/or in Poland?



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We thank you for your attention



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