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## Real Estate Taxation for EU Employees

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FFPE – 27 May 2021



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## Conference Cycle - 1<sup>st</sup> Semester 2021 -



### Seminars in English

**11 March**  
Belgian and international inheritance  
(civil and tax aspects)

**20 April**  
Gifts in an international context  
(civil and tax aspects)

**27 May**  
Real estate taxation in Belgium and abroad

### Seminars in French

**23 février**  
Successions dans un contexte international  
(aspects civils & fiscaux)

**25 mars**  
Donations dans un contexte international  
(aspects civils & fiscaux)

**29 avril**  
Fiscalité immobilière dans un contexte  
international

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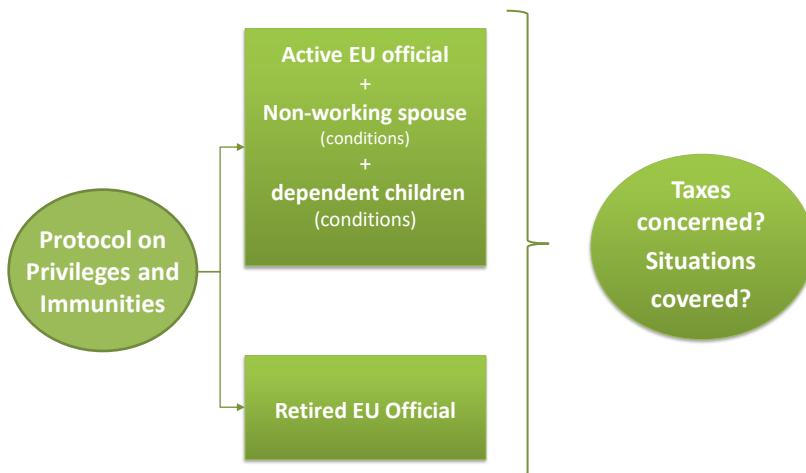
  
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# Agenda

- ❑ Introduction to real estate taxation in a cross-border context
- ❑ Impact of Protocol #7
- ❑ 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
    - Upon inheritance
- ❑ Real estate taxation in other EU Member States

## Fiscal Privileges of EU Employees - Protocol No. 7 -



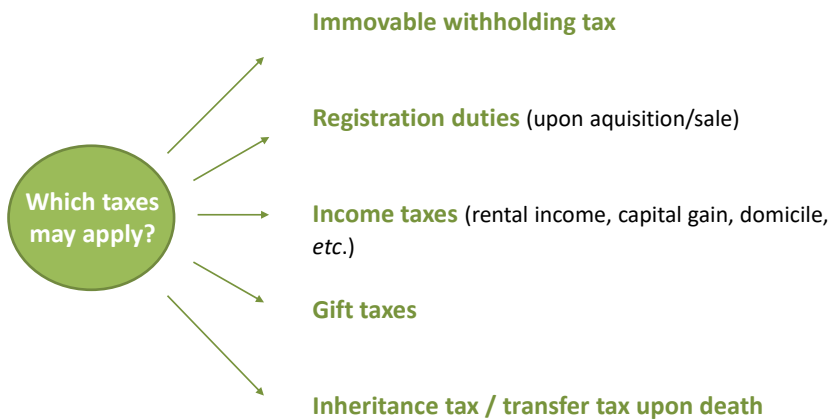


## Belgian real estate taxation - Principles -

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## Belgian law - Real estate taxation -



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## Belgian law - Immovable withholding tax -



### ❑ Cadastral income (C.I.)

- Fictitious rental value attributed to each property by the Belgian tax authorities

### ❑ Immovable withholding tax

= Property tax that must be paid each year

- Lump-sum determined based on the indexed C.I. multiplied by a coefficient

Indexed C.I. x coefficient

- Tax rebates / exemptions available in some cases

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




### ❑ Registration duties

- ✓ Purchase/sale: **10% or 12.5%** depending on the Region where the building is located
  - Taxable base: purchase price or market value (if higher)
  - Tax rebates?
  - Reduced rates?
- ✓ Sharing-out: **1% or 2.5%** depending on the Region where the building is located
  - Tax rebates?

### ❑ VAT

- Rate: 21% (instead of registration duties)
- New properties only (less than 2 years old)
- Optional regime



## Belgian income tax


### - Occupation/rental of a Belgian property -

**A Belgian tax resident owns a flat in Brussels**


- ❑ **If occupied by the owner**
  - ✓ Exemption of the main residence for income tax purposes
  - ✓ Not to be declared
  - ✓ Immovable withholding tax
- ❑ **If used as a secondary residence (not rented)**
  - ✓ Taxable base = indexed C.I.<sup>1</sup> + 40%
  - ✓ Non-indexed C.I. to be declared
  - ✓ Immovable withholding tax
- ❑ **If rented to a private individual for residential purposes**
  - ✓ Taxable base = indexed C.I.<sup>1</sup> + 40%
  - ✓ Non-indexed C.I. to be declared
  - ✓ Immovable withholding tax


<sup>1</sup> Coefficient d'indexation 2021 = 1,8630

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## Belgian income tax law

### - Occupation/rental of a Belgian property -

**A Belgian tax resident owns a flat in Brussels**

- ❑ **If rented to a company or to a private individual using it for commercial/professional purposes**
  - ✓ Taxable base = effective rental income *minus* deduction for expenses  
→ Minimum taxable base = Indexed C.I. + 40%
  - ✓ Reporting obligation: bruto rent + other rental benefits
  - ✓ Immovable withholding tax
- ❑ **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
  - ✓ Immovable withholding tax

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## Belgian law - Personal income tax -



- **Rates** from 25% to 50% (above € 41,060<sup>1</sup>) + municipal tax
- **Zero-bracket amount:** €8,990<sup>1</sup> for each **resident taxpayer**
- Additional tax-free allowance for **dependent children**:
- **Withholding tax on dividends / interest:** 30%  
(exemptions/reductions possible)

<sup>1</sup>Income year 2020

## Belgian income tax law - Sale of a Belgian property -



### □ Tax treatment of capital gains

- ✓ **Taxation if sale within a certain period of time**  
E.g. capital gain on buildings sold within 5 years: 16.5%  
→ Exception for domicile
- ✓ **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

## Belgian income tax law - Reporting obligations for non-residents -



A non-resident owns a flat in Brussels

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

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## Belgian law - Foreign property income -



A Belgian tax resident owns a property abroad

- Taxation of rental income, capital gains... earned abroad**
  - First, check if there is a **double tax treaty for income taxes** in place
  - In general, if a DTT is in place, the right to tax is where the property is located
    - ✓ Exemption (with progression method) or tax credit in the country of residence
    - ✓ The treatment in the other country may be different than in Belgium based on the applicable DTT with Belgium (e.g. *credit method* in Italy/Spain/France; *exemption with progression method* in DE, PL, UK)
  - If owner = Belgian tax resident (eg. retired EU Official residing in Belgium):
    - ✓ Exemption with progression method in Belgium (often of no effect)
    - ✓ Foreign property income must be declared in Belgium
    - ✓ **New in Belgium since February 2021: attribution of a Belgian C.I. to properties located abroad**

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## Belgian law - Inheritance tax (1/2) -



**A person who owns a property in Belgium passes away**

- Reminder: impact of Protocol No. 7**
- Inheritance tax** upon the death of a Belgian resident
  - Taxable base?
  - Rates?
- Inheritance tax** upon the death of a non-Belgian resident (e.g. active EU Employee)
  - **Limited assets:** Belgian property? Belgian real estate company?
  - **Taxable base:** market value *minus* debts linked to the property
  - Rates
- Risk of double taxation for inheritance purposes**

## Belgian law - Inheritance tax (2/2) -

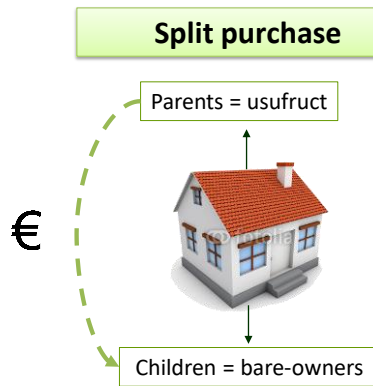


<ul style="list-style-type: none"> <li>▪ <b>Brussels</b> <table style="margin-left: 20px; border-collapse: collapse;"> <tr><td>Children/spouse</td><td style="text-align: right;">3% to 30%</td></tr> <tr><td>Brothers/sisters</td><td style="text-align: right;">20% to 65%</td></tr> <tr><td>Uncles/nephews</td><td style="text-align: right;">35% to 70%</td></tr> <tr><td>Others</td><td style="text-align: right;">40% to 80%</td></tr> </table> </li> <li>▪ <b>Wallonia</b> <table style="margin-left: 20px; border-collapse: collapse;"> <tr><td>Children/spouse</td><td style="text-align: right;">3% to 30%</td></tr> <tr><td>Brothers/sisters</td><td style="text-align: right;">20% to 65%</td></tr> <tr><td>Uncles/nephews</td><td style="text-align: right;">25% to 70%</td></tr> <tr><td>Others</td><td style="text-align: right;">30% to 80%</td></tr> </table> </li> <li>▪ <b>Flanders</b> <table style="margin-left: 20px; border-collapse: collapse;"> <tr><td>Children/spouse</td><td style="text-align: right;">3% to 27%</td></tr> <tr><td>Others</td><td style="text-align: right;">25% to 55%</td></tr> </table> </li> </ul>	Children/spouse	3% to 30%	Brothers/sisters	20% to 65%	Uncles/nephews	35% to 70%	Others	40% to 80%	Children/spouse	3% to 30%	Brothers/sisters	20% to 65%	Uncles/nephews	25% to 70%	Others	30% to 80%	Children/spouse	3% to 27%	Others	25% to 55%	<div style="font-size: 3em; line-height: 1;">}</div> <p><b>Exemption of the family home</b> for the surviving spouse/cohabitant + <b>Reduced rates</b> in specific cases (NGO, domicile, ...)</p>
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**It is possible to achieve a substantial inheritance tax saving via gifts, use of a company, family foundation, life insurance, split acquisition, etc.**

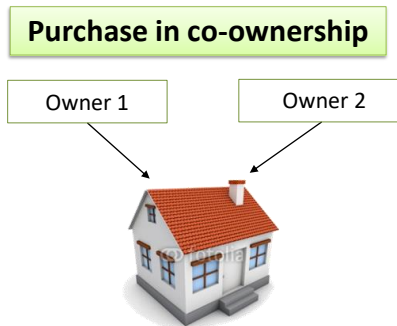


## Examples of potential tax optimisations when acquiring a new property



Tax benefit? Risk of fiscal abuse? Impact of the new reform of Belgian Property Law applicable as of 1st Sept. 2021?

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Tax benefit? Risk of fiscal abuse? Impact of the new reform of Belgian Property Law applicable as of 1st Sept. 2021?

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## Examples of potential tax optimisations when acquiring a new property

Acquisition of a Belgian property via a company?

Possibility to give the shares of the company to your heirs during your lifetime at a zero tax cost or at a reduced tax cost in Belgium

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## Belgian law - Taxation of property gifts -

- ❑ Gift of a **Belgian property**
  - Brussels
  - Wallonia
  - Flanders

Children/spouse 3% to 27%	Others 10% to 40%
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- If beneficiary = foreign resident → risk of double taxation?
- ❑ Gift of a **foreign property** by a **Belgian resident**?
- ❑ **Tax cost optimization** of the gift of a Belgian property?
  - « Spread gift », « quick gift », purchase via a company, etc.

Possibility to structure the gift so that

- the donor can retain (most) rights on the assets given
- the donor and his/her spouse are fully secured during their lifetime

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## Belgian law - Example of a spread gift -



A Belgian resident (living in Brussels) with one child (only heir) owns a building in Brussels worth €500,000

- Inheritance tax upon death: +- €110,000
- If gift in one shot: → total tax cost: +- €70,000 (tax saving of €40,00)
- If gift in two shots (1/2 each) spread over > 3 years → total tax cost: +- €30,000 (tax saving of €80,000)

### ❑ Pitfalls:

- Risk of decease of the donor prior to the second gift
- Increase in value of the building
- Multiple notarial deeds (cost)
- Legislative change
- Etc.

❑ Gift of the bare-ownership of a building: taxable base?

❑ Risk of 'simulation' or tax abuse?

## !!! NEW !!! Reform of Belgian Property Law (applicable as of 1st Sept. 2021)



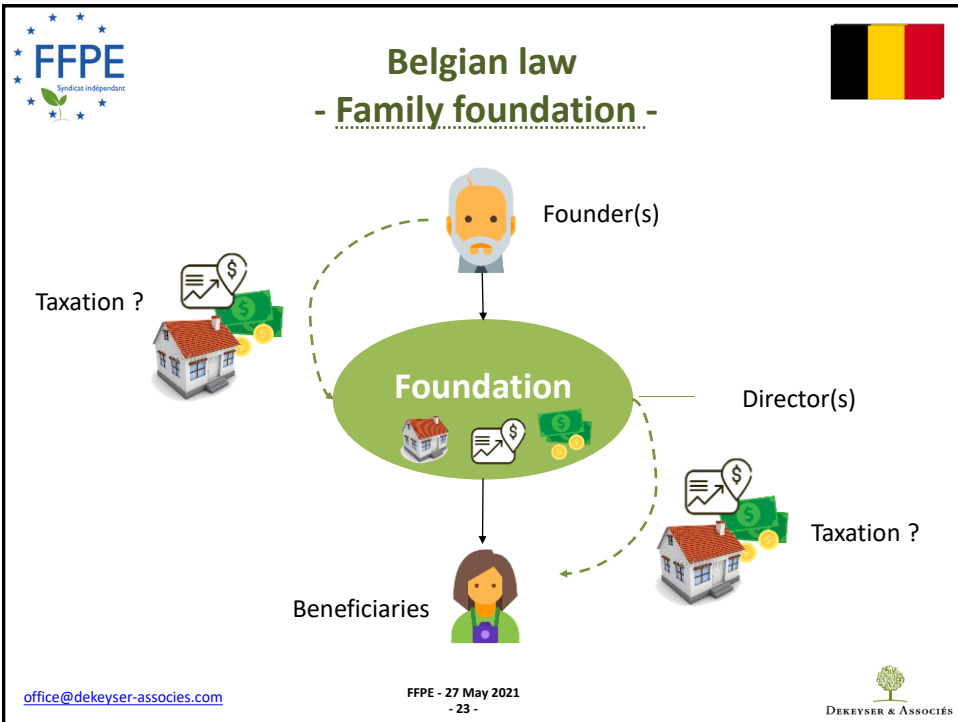
❑ New rules relating to usufruct, surface right (*droit de superficie*), long-term lease right (*droit d'emphytéose*), etc.

### ➤ Examples:

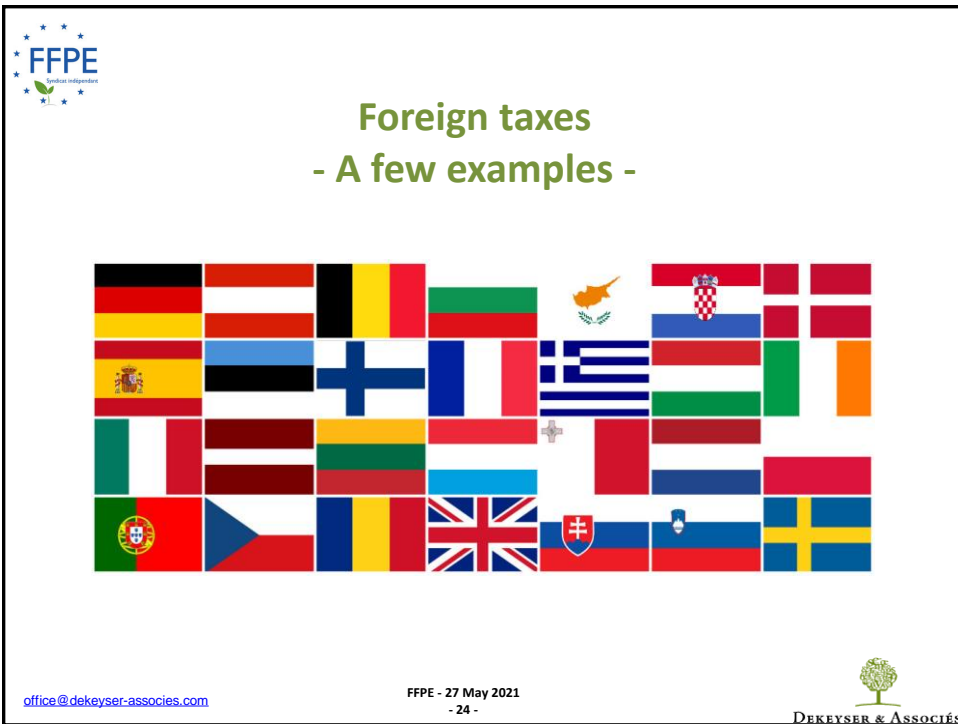
- **Automatic increase in the case of usufruct on multiple heads:** impact? possible derogation? taxation?
- **Obligation to respect the destination of the property subject to usufruct:** possible derogation?
- **Obligation to take out insurance for the usufructuary:** possible derogation?
- Extension of the maximum duration of the surface right from 50 to 99 years

❑ Effect on the usufruct of the surviving spouse?

❑ Impact on previous operations (gifts, sales, etc.)?

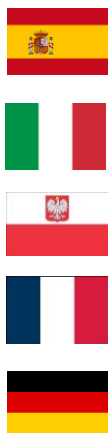


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**FFPE** Real estate taxation in other Member States  
- A few examples -



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


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## Practical cases

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## Practical case 1



A Slovak man is married with a Spanish woman.  
Both are EU Officials based in Brussels (recruited in Slovakia & Spain)  
They own their domicile in Brussels worth €600,000 (C.I. = €4,000).  
They rent 1/3 of the house for €12,000/year.

*Any tax return to be filed in Belgium?*  
*Any income tax to be paid in Belgium?*  
*Is property tax due in Belgium?*  
*Any declaration to be filed in the country of tax domicile?*

The man passes away while still active for the EC in Brussels  
*Any inheritance tax due in Slovakia? in Spain? in Belgium?*

## Practical case 2



A Polish man is married with a French woman.  
The husband is a EU Official working in Brussels (recruited in Paris).  
The wife is a retired EU Official.  
They own an **apartment in Brussels** (domicile) and an **investment property in Nice**

*Which revenues must be reported and/or taxed in Belgium?*  
*Which revenues must be reported and/or in France?*  
*Which revenues must be reported and/or in Poland?*



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# We thank you for your attention



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