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Real Estate Taxation for EU Employees

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FFPE – 8 December 2021



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Agenda

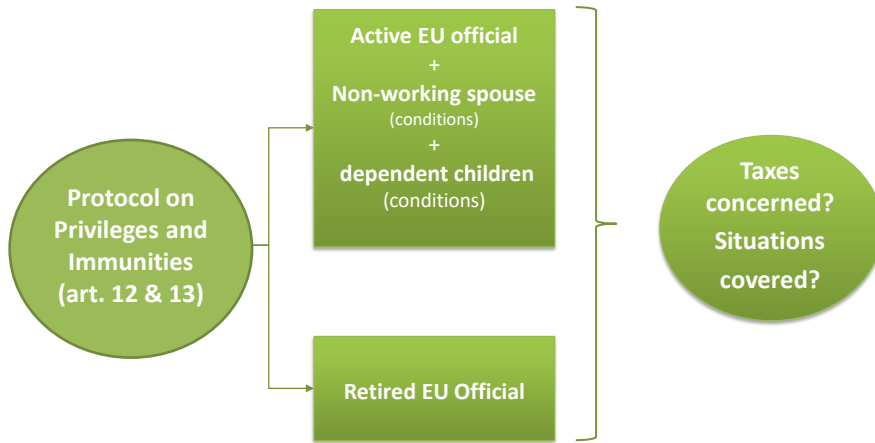
- Introduction to real estate taxation in a cross-border context
- Impact of Protocol #7
- Belgian real estate taxation
 - When does it apply?
 - How is real estate -located in Belgium or abroad- taxed in Belgium?
 - Upon purchase
 - Upon rental by an EU official
 - Upon sale
 - Upon gift / inheritance
 - Latest developments in 2021-2022
- Real estate taxation in other EU Member States

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Fiscal Privileges of EU Employees - Protocol No. 7 -

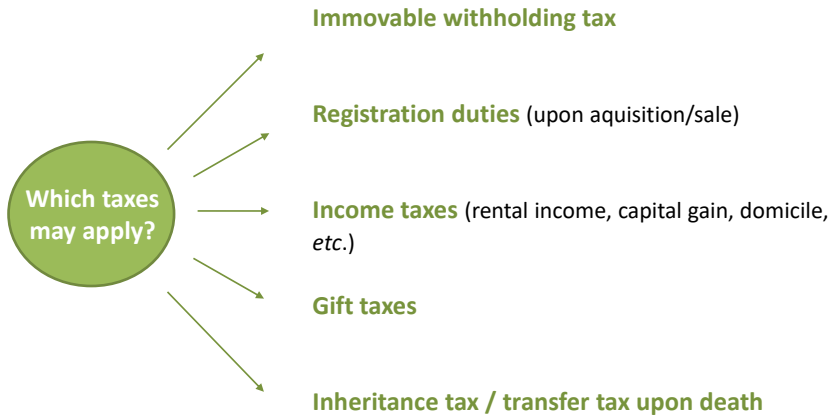


Note: some taxes are not covered: registration fees, gift tax, property tax, VAT, etc.



Belgian real estate taxation - Principles -

Belgian law - Real estate taxation -



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?

BREAKING NEWS: proposed changes to tariffs in Flanders from 1 January 2022

- Reduction of rate to 3% or even 1% on the purchase of a first home
- Increase of rate from 10% to 12% when buying a second home / rental property

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

VAT

- Rate: 21% (instead of registration duties) → “new” properties only
- Optional regime

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 - 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

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
 - Minimum taxable base = Indexed C.I. + 40%
 - ✓ 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



Belgian tax rules

- Sale of Belgian real estate -



- ❑ **Tax treatment of capital gains**
 - ✓ **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





- 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'

Foreign property income: Tax treatment in Belgium/abroad?



A Belgian tax resident owns real estate abroad (and conversely)

- 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 (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 (Feb. '21): attribution of a Belgian C.I. to foreign properties**

Foreign property income: New reporting obligation in Belgium



Belgium condemned several times by the ECJ
New taxable base since this year: reportable income = "Belgian-style RC"
deadline 31 December 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**
3. **Reconstitution method:** normal market value in 1975 x 5.3% capitalization rate
4. **New method:** current normal market value x correction factor x 5.3% capitalization rate

Foreign property income: New reporting obligation in Belgium



□ 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		



Foreign property income: New reporting obligation in Belgium



□ Reporting obligations

Spontaneous declaration

- Taxpayer who was the owner on 31.12.20 → no later than 31.12.21
- Taxpayer who acquires or sells a property in 2021 → 4 months from acquisition
 - ↳ Property acquired or disposed of between 1/1/2021 and 25/2/2021: declaration until 30.06.2021
- 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 EUR 250 to EUR 3,000**



Foreign property income: New reporting obligation in Belgium



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 civil law

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 (sales, gifts, etc.)?

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 Slovak man is married with a Portuguese woman.
Both are EU Officials in Brussels (recruited in Poland & Portugal)
They own a house (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?*

Practical case 2



A Polish man is married with a French woman.
The man is a EU Official working in Brussels (recruited in Paris).
The wife is a retired EU Official.
They own an **apartment** (domicile) and a **flat** (rented out) in
Brussels. They also own a **vacation home 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?*



DEKEYSER & ASSOCIÉS

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Thank you for your attention!



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