

## PREFACE TO THE OCTOBER 2002 ISSUE

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By publishing the "Tax Survey", the Research and Information Department of the Ministry of Finance aims at providing a regularly updated **overview** of the tax legislation in Belgium. The subject being particularly intricate, this brochure cannot of course cover every specific regulation: only essential details or the most frequently occurring cases will be described here.

The first part of the Tax Survey deals with direct taxation: personal income tax (PIT), corporate income tax (CIT), legal entities income tax (LEIT). The non-resident income tax is not dealt with; it is a specific domain one can only give a good perception of if the international agreements applicable to the bilateral situations are also dealt with. The last chapter of Part One deals with withholding taxes and advance payments. A global description of the PIT-reform has been added at the end of the first chapter of Part One.

The second part of the survey deals with indirect taxation: VAT, registration duties, estate duties, excise duties, ecotaxes, etc.

The third part deals with special tax regimes (co-ordination centres, UCITs, etc.) and the tax regimes applicable to long term savings (pension schemes and life insurance contracts).

Unless stated otherwise, the legislation described is the one which applies :

- **to 2001 income (tax year 2002)** in the matter of direct taxation, with the exception of withholding taxes (part I, chapters 1 to 4 and part III);
- **on October 1st, 2002** as far as indirect taxation (part II) and withholding taxes (part I, chapter 5) are concerned.

**As heretofore, the printed version of the Tax Survey will be updated once a year. The Tax Survey can now also be referred to on our website at <http://docufin.fgov.be>, where it can be downloaded as a pdf-file. Where *important* modifications in the tax legislation may occur in between two issues of the printed version, these changes will be made in the electronic version as soon as possible. The present text is the second adaptation of the Tax Survey 2002.**

The authors of this publication are E. DELODDERE (Part II) and Ch. VALENDUC (Part I and Part III). They would like to thank their colleagues from the Research and Information Department and from the Tax Administrations for their preliminary work, their observations and the translations made during the drawing-up of this Tax Survey.

Although the authors have taken particular care to ensure the reliability of the information given in this publication, the latter must not be considered as an administrative circular. The Tax Survey was written for purely documentary purposes at a general and global level. No rights can be founded on it. The Research and Information Department is not authorized to answer queries with regard to the application of tax legislation to individual cases.

The Tax Survey is also available in Dutch and French.

October 2002

E. DELODDERE and Ch. VALENDUC  
(Editors)



**PART ONE**

**DIRECT TAXATION**

CHAPTER ONE	PERSONAL INCOME TAX (PIT)	5
CHAPTER TWO	CORPORATE TAXATION (CIT)	55
CHAPTER THREE	PROVISIONS COMMON TO PIT AND CIT	73
CHAPTER FOUR	LEGAL ENTITIES INCOME TAX (LEIT)	81
CHAPTER FIVE	WITHHOLDING TAXES AND ADVANCE PAYMENTS	83



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## CHAPTER ONE PERSONAL INCOME TAX (PIT)

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### *What is new ?*

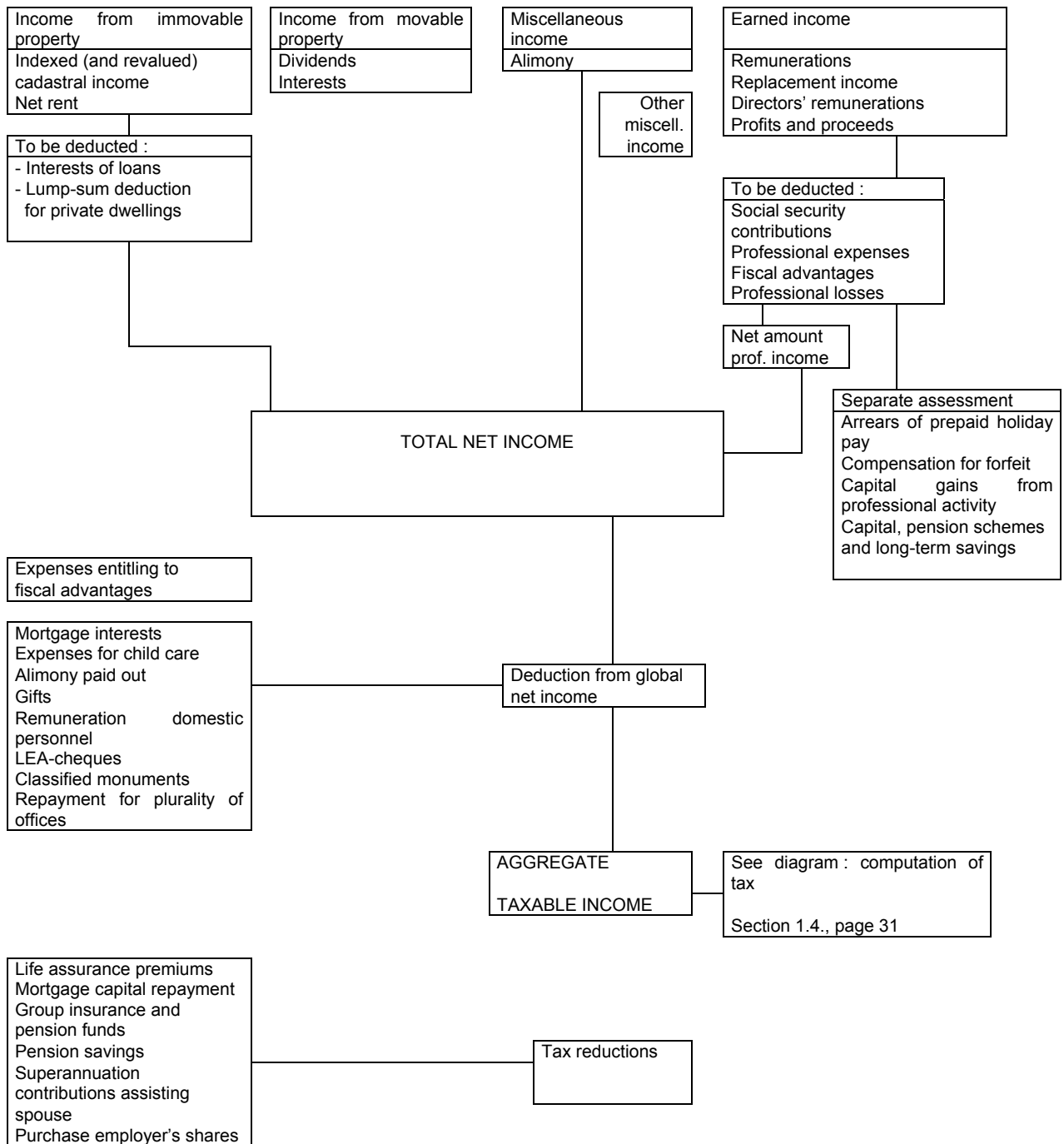
- *The transparency-roundings in € are applicable as from 2001.*
- *The fiscal regime applying to LEA cheques also applies to service cheques*
- *The progressive abolition of the additional crisis surcharge is being carried on.*
- *Some provisions in the tax reform already apply as from 2001. Annex I provides a global description of the reform and the calendar for its implementation.*

In this chapter the main features of the Personal Income Tax are explained in **four steps**.

- Step one deals with the **chargeable persons** : it explains who is chargeable and where one is chargeable. Location of the taxpayer is important, for it determines the rate of the municipal surcharges applicable to that taxpayer.
- Step two deals with the establishment of the **net income**, i.e. the income minus expenses and losses. The different categories of income are gone through, as well as the gross taxable components thereof, the exempt components and the deductible expenses.  
Step two ends with the apportionment of the net income between spouses.
- Step three deals with the **expenses which entitle to a fiscal advantage**; the latter can consist of an amount deducted from the taxable income or of a reduction of the tax payable. It explains on what conditions these advantages are granted, how they are granted and what are possibly their limits.
- Step four deals with the **computation of the tax**. In its initial stage a tax results from the application of a progressive scale : the tax rate increases, in successive tax brackets, according to the taxable income. Then comes an analysis of the different stages in the computation of the tax, the most important being the calculation of the tax exempt quotas that take into account the taxpayer's family situation, and the tax reductions for replacement income (i.e. the taxable social transfers).

The computation of the taxable income is represented in the following chart.

**Diagram of PIT**  
**Taxable income and deductible components**



### 1.1. Chargeable persons ; location of tax liability

Personal income tax is due by the inhabitants of the Kingdom, i.e. the persons whose domicile or whose seat of wealth is located in Belgium.

Unless evidence to the contrary can be provided, all individuals listed in the National Register of Individuals shall be considered inhabitants of the Kingdom.

"Domicile" refers to a factual situation characterized by the actual residence or living quarters located in the country; "seat of wealth" refers to the place from where the assets concerned are managed.

A temporary absence from the country does not imply a change of domicile.

The municipality where the taxpayer is domiciled on January 1st of the tax year (01.01.2002 for 2001 income) is the "tax municipality", which determines the rate of the local surtax.

### 1.2. Determination of the net income (i.e. after deduction of expenses and losses)

The taxable income comprises real-estate income, income from movable property, miscellaneous income and earned income. For each of these categories, there are specific rules for the calculation of the net income: these rules are described hereafter.

#### 1.2.1. Real estate income

##### A. General rules

The taxable amount of real estate income is determined either on the basis of the cadastral income or on the basis of the rent. The net amount is then obtained by deducting interests on loans. The taxpayer's dwelling-house represents a special case : the taxable income thereof is granted a lump-sum relief and the withholding tax pertaining to it is partly creditable against the taxpayer's income tax liability.

##### **TAXABLE AMOUNT**

The underlying idea here is the cadastral income, which is a notional income deemed to represent the net annual income from the premises concerned, at the price of the year used as a reference for the most recent official valuation procedure. The reference year is 1975, but the cadastral income has been indexed since 1990, and for income of 2001 the adjustment coefficient is 1.2857.

The taxable income depends on the purpose of the building. Table 1 lists the possible purposes of **built movable property**.

**Table 1. 1.**  
***Income from real property : determination of the taxable amount***

	<b>Purpose of real property ?</b>	<b>Taxable income</b>
a.	It is the taxpayer's dwelling-house	The indexed cadastral income
b.	It is not the taxpayer's dwelling-house, but it is not leased (a second residence, for example)	The indexed cadastral income increased by 40%
c.	It is used by its owner for the purpose of a trade or business	No taxable income from immovable property; it is deemed to be a professional income
d.	It is leased to a natural person who does not use it for the purpose of a trade or business	The indexed cadastral income increased by 40%
e.	It is leased <ul style="list-style-type: none"> <li>- to a natural person who uses it for the purpose of a trade or business,</li> <li>- to a company (*)</li> <li>- to any other legal person except those listed in (f)</li> </ul>	The rent less 40% for standard expenses, BUT <ul style="list-style-type: none"> <li>- the expenses may not exceed two thirds of 3.19 times the cadastral income</li> <li>- the net rent may not be less than the indexed cadastral income increased by 40%</li> </ul>
f.	It is leased to a legal person not being a company, for purposes of underlease to one or more natural persons in order to be used exclusively as a dwelling-house	The indexed cadastral income increased by 40%

(\*) *taking into account the requalification-of-income principle. See infra : special provisions.*

These rules also apply to **unbuilt real estate**, provided the following three modifications are taken into consideration :

- cases (a) and (f) do not apply, of course,
- in case (e) the taxable income is the amount of the gross rent, minus flat-rate 10% deduction for expenses,
- as for farm rent, the taxable amount is the cadastral income.

#### **DEDUCTIBLE INTERESTS OF LOANS**

Interests on loans are eligible for relief when they relate to debts incurred for the sole purpose of acquiring or maintaining real property. In the case of an acquisition of property by inheritance, the interest accruing from a loan taken out with a view to paying inheritance tax is deductible to the extent that it relates to that property.

The deductible amount may not exceed the amount of the taxable income from real property. Where a taxpayer has incurred a loan in order to buy a dwelling-house, for example, and has no other income from immovable property, the deductible interests may not exceed the indexed cadastral income of that dwelling-house.



Where newly built houses or important renovation works are involved, an additional deduction of mortgage interests may be granted <sup>(1)</sup>.

#### LUMP-SUM DEDUCTION FROM THE CADASTRAL INCOME OF A DWELLING-HOUSE

A lump-sum deduction is granted on the cadastral income of a dwelling house. This deduction is inflation adjusted according to the same arrangements as the cadastral income. For 2001 income, this deduction amounts to € 3,860 (155,712 BEF), with the following increases :

- € 320 (12,909 BEF) for the spouse,
- € 320 (12,909 BEF) for each dependent person,
- € 320 (12,909 BEF) for each child having been dependent on the tax payer when living in the house in question.

The **standard deduction** is made up of the basic deduction and of any increases which may apply thereto.

Where the total net income does not exceed € 27,060 (1,091,598 BEF), an **additional deduction** is awarded which is equal to half the difference between the cadastral income and the standard deduction.

The total deduction cannot exceed the cadastral income in respect of which it is granted.

<i>Example (in euro)</i>			
<i>Lump-sum deduction from cadastral income of a dwelling-house</i>			
<i>Cadastral income</i>	<i>Family situation</i>	<i>Other net income</i>	<i>Deduction</i>
<i>1,000</i>	<i>married, two children</i>	<i>15,000</i>	<i>1,000</i>
<i>5,000</i>	<i>married, one child</i>	<i>12,500</i>	<i>4,750</i>
<i>4,500</i>	<i>married, one child</i>	<i>45,000</i>	<i>4,500</i>

The deduction can also apply to a building other than the dwelling-house if the taxpayer is able to prove that the non-occupation of that building is justified on professional or social grounds.

The deduction does not apply to the parts of the dwelling-house allocated by the owner to any professional activity or occupied by persons who are not part of the household.

#### TAX CREDIT FOR REAL ESTATE INCOME

Only the real property withholding tax pertaining to the taxpayer's principal private dwelling is creditable against that individual's final income tax liability. The withholding tax must be actually due and the tax credit is strictly limited to 12.5% of the adjusted cadastral income included in the taxpayer's global taxable income.

In addition the tax credit is limited to the tax due.

<sup>1</sup>

See page 25.

**B.** *Some special provisions*

- Real estate income also includes sums obtained through the constitution or the transfer of long lease rights, building and planting rights or similar land rights. Sums paid for the acquisition of such rights are deductible.
- When a natural person rents a building to a company in which he is a **director** or a liquidator, or in which he performs a similar function, the amount of the rent and rental benefits received can be **requalified** and classified as **earned income**: the part exceeding 5.43 times the cadastral income stops being considered income from immovable property and becomes a director's remuneration <sup>(2)</sup>.
- In the event of a **change of ownership** during the course of the year, the taxable income is calculated in twelfths, on the basis of the situation on the 16th day of the month.  
The same rule applies where the cadastral income is modified in the course of the year.
- Where a rented building is **partly** used by the tenant **for a professional activity**, the tax base is determined on the basis of the rent for the whole building, except if the parts used for professional and private purposes are defined by a registered lease: if so, each part is examined according to the relevant arrangements.
- When an **unfurnished** building is **leased** and the contract does not provide for separate rents for the building and for the furniture, 60% of the total rent are deemed to concern the building and are a taxable real estate income, whereas the remaining 40% are deemed to concern the furniture and are an income from movable assets <sup>(3)</sup>.
- When a non-furnished building has remained entirely **unoccupied or unproductive** for at least 90 days, the cadastral income is only included in the taxable income in proportion to the time the building has been occupied and/or has produced income. Where a property has been unproductive for 4 months, for example, only 8/12 of the cadastral income is taxable.

**1.2.2. Income from movable property**

There are **three** broad **categories** of income from movable property:

- income in respect of which a **tax return is optional** because an exonerating withholding tax on income from movable property has been withheld at the collection of this income;
- income in respect of which a **tax return is obligatory** because no withholding tax on movable property has been withheld at the collection of this income;
- non-taxable incomes.

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<sup>2</sup> The limit is actually five thirds (not rounded) of the « revalued » cadastral income, i.e. multiplied by 3.26.

<sup>3</sup> This is an income from movable property in respect of which a return is obligatory; see hereafter 1.2.2.B.

A. Income from movable property for which a return is optional

As a general rule, dividends and income from deposits, bonds and fixed interest securities are liable to withholding tax at their collection; for this income, no return has to be submitted.

B. Income from movable property for which a return is obligatory

Income referred to :

- income earned **abroad** and collected directly abroad;
- income from **ordinary savings accounts** and income from **capital invested in co-operative companies or companies with a social objective**, which are exempt from the withholding tax on income from movable property but liable to PIT <sup>(4)</sup>;
- other income not liable to withholding tax, such as income from life annuities or temporary annuities, income from rent, from farming out or from the use or lease of any movable property, as well as income from mortgage debts other than mortgage bonds on real estate situated in Belgium.

C. Non-taxable income from movable property

The most frequently occurring cases are the following :

- the first bracket of € 1,440 (58,089 BEF) of income from ordinary savings accounts, **per household**;
- the first bracket of € 150 (6,051 BEF) of income from capital invested in co-operative companies recognized by the National Co-operation Council, or in companies with a social objective, **per household**;
- yields of so-called "capitalization UCITs".

Non-taxable income also includes income from preferential shares in the Belgian National Railway Company and from public bonds issued prior to 1962 that are exempt from real and personal taxation or from all forms of taxation.

D. Assessing procedures

Income from movable property is taxable with respect to its gross amount, i.e. before withholding tax on income from movable property <sup>(5)</sup> and before deduction of recovery and maintenance costs.

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<sup>4</sup> The exemption is awarded per person as for the withholding tax on income from movable property and per household as for the PIT.

<sup>5</sup> The income is taxable on behalf of the successive holders of the securities in proportion to the periods of ownership.

Income from movable property can be **separately taxed**, in which case the following rates apply :

*Table 1. 2*  
*Assessment rates of income from movable property*

DIVIDENDS	
From shares issued as from January 1st, 1994 by a public call for funds	15%
From shares issued as from January 1st, 1994, provided that the newly issued shares are attributed in consideration of cash contribution, that they are in registered form as from the date of their issue or that they are the object of an open deposit in Belgium	15%
From shares distributed by investment companies, except in the case of total or partial repayment of a company's capital or in the case of an acquisition of own shares	15%
From so-called AFV-shares (fiscal advantages shares), but only where such shares are quoted on a stock exchange and where the company paying the income has irrevocably waived the transfer of the benefit resulting from the exemption of corporate tax	15%
From other shares	25%
INTEREST AND OTHER INCOME FROM CAPITAL AND MOVABLE PROPERTY	
Interests from securities issued as from March 1st, 1990	15%
Other income from capital and movable property	25%

**Total aggregation** is applied however where it is to the advantage of the taxpayer; only then are recovery and maintenance costs deductible.

Where the movable income is actually taxed separately, only the additional municipal surtax must be added to the tax amount, and **not the additional crisis surcharge**.

### **1.2.3. Miscellaneous income**

This third category of taxable income includes all income with the **common characteristic of not being earned by performing a professional activity**. Among the categories of income mentioned hereafter, only « current » maintenance payments are included in the aggregated taxable income (thus not « arrears » of maintenance payments). All other miscellaneous income is taxed separately <sup>(6)</sup>.

#### **MAINTENANCE PAYMENTS**

80% of maintenance payments received in the course of a taxable period are subject to tax (they are included in the aggregated taxable income). Arrears of maintenance payments are also taxed in respect of 80% of their total amount ; nevertheless where paid under a Court order with retroactive effect they may be separately taxed.

<sup>6</sup> Rates : see page 39.

### **OCCASIONAL PROFITS AND PROCEEDS**

The profits and proceeds not connected with a professional activity are considered here. Are not concerned :

- profits and proceeds obtained through the normal management of one's private fortune,
- gains from gambling and lotteries.

The total amount of occasional profits and proceeds received during a tax period minus actually incurred expenses is taxable.

### **PRIZES AND SUBSIDIES**

Prizes, subsidies, annuities or pensions allocated to scholars, authors or artists by Belgian or foreign public bodies or by non-profit institutions <sup>(7)</sup> are also subject to taxation as « miscellaneous income ».

This income is taxable in respect of the total amount received, increased by the retained withholding tax on earned income and, where appropriate, decreased by donations made in favour of Belgian universities and recognized scientific institutions.

There is no tax reduction for annuities and pensions. Prizes and subsidies <sup>(8)</sup> are only taxable in as far as they exceed € 2,880 (116,179 BEF).

### **PRIZES ATTACHED TO DEBENTURE BONDS**

This type of income is rare, lottery loans having fallen into abeyance. The taxable amount is the net amount received increased by the (actual or notional) withholding tax.

### **INCOME FROM A SUBLEASE OR THE TRANSFER OF A LEASE**

The taxable amount of income from a sublease or from the transfer of a lease is the gross rent received from the sublease, minus actual expenses and rent paid.

### **INCOME FROM THE PERMISSION TO PLACE ADVERTISING BOARDS**

The taxable amount is the amount received minus actual expenses or minus a flat-rate 5% for expenses.

### **INCOME FROM SPORTING RIGHTS (FOWLING, FISHING, SHOOTING)**

The taxable amount is the total amount received.

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<sup>7</sup>

Unless these organizations are recognized by a Royal Decree approved by the Council of Ministers.

<sup>8</sup>

Where subsidies are allocated for several years, the taxpayer is entitled to deduction only in respect of the first two years.

### **CAPITAL GAINS FROM BUILT REAL PROPERTY**

These capital gains are only taxable as miscellaneous income where all the following conditions are met :

- the property is situated in Belgium,
- it is not the taxpayer's dwelling-house <sup>(9)</sup>,
- the alienation (generally a sale) occurs less than five years after the acquisition for valuable consideration, or less than three years after a gift where the grantor had acquired the property himself for valuable consideration less than five years before.

The taxable amount is determined on the basis of the transfer price, from which may be deducted :

- the purchase price and acquisition costs,
- a 5% revaluation of the purchase price and costs for each full year of ownership,
- the costs of renovation work carried out by a registered contractor on behalf of the owner between the time of acquisition and the time of alienation.

### **CAPITAL GAINS FROM UNBUILT REAL PROPERTY**

These capital gains are only taxable where the following conditions are all met :

- the real property is situated in Belgium,
- the alienation occurs less than eight years after the acquisition for valuable consideration or less than three years after a gift and less than eight years after the acquisition by the grantor for valuable consideration.

The taxable amount is determined on the basis of the transfer price, from which may be deducted :

- the purchase price and acquisition costs,
- a 5% revaluation of the purchase price and acquisition costs for each full year of ownership between the acquisition and the alienation.

### **CAPITAL GAINS REALIZED UPON THE ALIENATION OF A BUILDING PUT UP ON LAND ACQUIRED FOR CONSIDERATION**

These capital gains are only liable to tax where all the conditions mentioned hereafter are met :

- the building is situated in Belgium,
- its construction was started :
  - less than five years after the acquisition of the land for a consideration by the taxpayer,
  - or less than five years after the acquisition of the land by the grantor,
- the alienation takes place less than five years after the building was first brought into use or put up for rent.

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<sup>9</sup> I.e. the house in respect of which he is entitled to a deduction from the cadastral income under PIT and to a tax credit for real estate income ; see supra, page 9.

The taxable amount is determined on the basis of the transfer price, from which may be deducted :

- the purchase price and acquisition costs,
- a 5% revaluation of the purchase price and costs for each full year of ownership between the acquisition and the alienation,
- the costs of renovation work carried out by a registered contractor on behalf of the owner between the first occupancy or letting and the alienation.

#### **CAPITAL GAINS REALIZED ON THE TRANSFER OF AN IMPORTANT PARCEL OF SHARES**

These capital gains are taxable as miscellaneous income only where an important parcel of shares (more than 25%) is transferred to a company which does not have its registered seat in Belgium or to a legal person liable to NRIT (non-resident income tax).

The taxable amount is the difference between the transfer price and the purchase price, the latter being revalued if necessary (<sup>10</sup>).

#### **1.2.4. Earned income**

There are six categories of professional earnings :

1. employees' salaries and wages;
2. company directors' remunerations;
3. profits from agricultural, industrial and commercial activities;
4. proceeds from a liberal profession;
5. profits and proceeds from former professional activities;
6. replacement income: pensions, early retirement payments, unemployment benefits, health insurance benefits, etc.

The net income is determined in six stages :

- deduction of social security contributions;
- deduction of actual or lump-sum expenses;
- economic exemptions, notably tax measures in favour of investment and/or employment;
- clearance of losses;
- awarding of the "assistant spouse" quota and the marital quotient;
- compensation of losses between spouses.

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<sup>10</sup> The revaluation only concerns acquisitions realized before 1949.

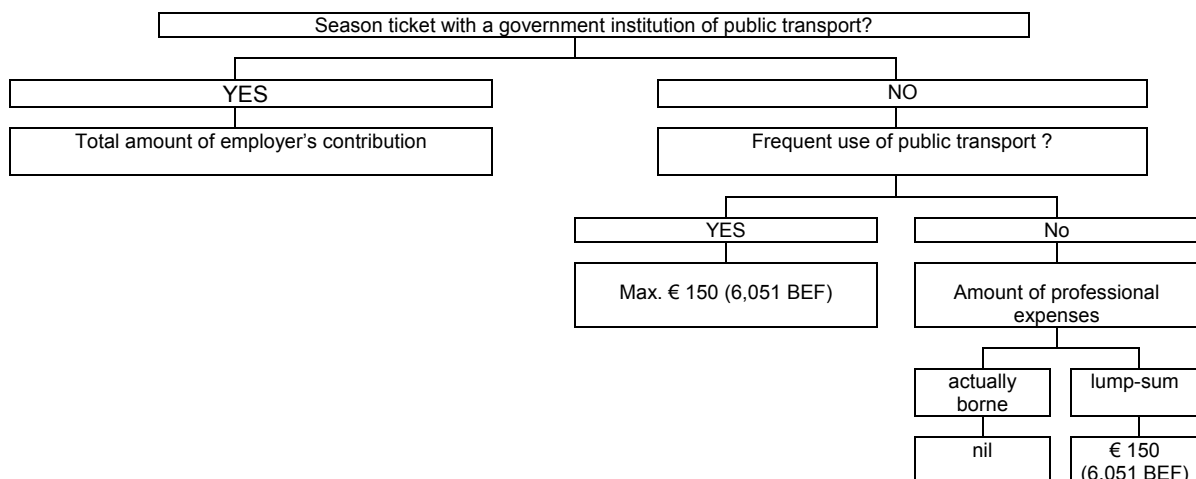
A. Taxable income, exempt income : a few clarifications

It is impossible to tell the long and short of the rules determining whether an income is taxable or not : only the general rules and the most frequent cases will be developed hereafter, and special attention will be given to earned income and replacement income.

**Earned income** comprises wages, salaries and other remunerations received with respect to a professional activity. Is not comprised, the repayment of expenditures characteristic of employers.

Commuting expenses have to be borne by the employee; they are deductible as professional expenses (see further, under C). Where these expenses are refunded by the employer, they are in principle a taxable income. The latter can partly be exempted however; the following chart explains the different possibilities.

*How to determine the exempt part of the sums reimbursed by the employer for commuting expenses ?*



The mileage allowance for cycling commuters is also exempt from tax up to € 0.15 (6 BEF) a kilometre.

Earned income includes compensations for loss of employment, arrears and advance holiday pay. These incomes are taxed separately, except compensations for loss of employment whose gross amount does not exceed € 710 (28,641 BEF).

As regards remunerations relating to activities performed in the framework of **local employment agencies, € 3.72 (150 BEF) are exempt from tax for each hour worked.**



Earned income comprises the advantages of any kind obtained in respect of professional activities; this principle is extended to all categories of professional income.

#### The tax regime for stock options

Broadly speaking, a stock option plan consists of a right, granted voluntarily by a company to their staff, allowing the latter to acquire shares in that company within a fixed period and at a predetermined price, called the exercise price. This new tax regime for stock options applies to all companies and is not restricted to quoted companies.

The granting of share options is considered a taxable advantage of any kind. What is particular about this new regime is that **the right becomes a taxable income at the time it is received** and not at the time it is exercised.

The taxable advantage is **valued at a flat rate** <sup>(11)</sup>. It is fixed at 15% of the value of the shares the option relates to, at the time of the granting. This percentage is increased by 1% for each year or part of a year exceeding five years. Where a stock option plan provides for the option to be exercised seven years after the granting thereof, for example, the advantage of any kind shall be fixed at a 17% flat rate (15 + (7-5)) of the shares' value at the day of their granting.

These percentages are halved when the following conditions are jointly met :

- the exercise price is determined definitely at the time the right is granted,
- the option may neither be exercised before the end of the third nor after the end of the tenth calendar year following the year the right is granted,
- the option may not be the object of a transfer inter vivos,
- the shares may not be covered against the risk of depreciation,
- the option shall relate to shares either of the company on behalf of which the professional activity is performed or of a parent company thereof.

The advantage thus calculated is **added to the aggregated taxable income**. The assessment pertaining to it is a final one. Possible capital gains realized or recorded upon the exercise of the right are not taxable.

Although, as a general rule, **replacement incomes** are taxable, some **social transfers** are exempt. Are concerned :

- the subsistence allowance;
- the legal child benefits;
- maternity allowance and legal adoption premiums;
- disability allowances chargeable to Treasury under current legislation;
- war pensions ;
- allowances paid in respect of incapacity for work or occupational disease to a person losing no professional income. The allowances are automatically exempted where the degree of disablement does not exceed 20% or where the allowances are paid on top of a retirement pension. Where the degree of disablement exceeds 20%, the tax exemption is in principle limited to that percentage.

<sup>11</sup> Where the shares are quoted or traded on a stock exchange, the taxable advantage is generally determined in respect of the last closing rate on the day preceding the day it was granted.

### B. Deduction of social security contributions

**Employees' salaries and wages** are taxable in respect of their gross amount less personal social security contributions.

**Emoluments paid to company directors** are also taxable in respect of their gross amount less the contributions payable in respect of social legislation. Premiums paid to recognized mutual insurance companies for "minor risks" are regarded as social security contributions.

Taxable **profits and proceeds** are determined in a similar way.

**Replacement income** can, in certain cases, be liable to social security contributions: in this case, they are to be deducted to ascertain the gross taxable amount.

The special social security contribution deducted, as from the second quarter of 1994, from the salaries of employees (or their counterparts) whose income exceeds € 18,592.01 (750,000 BEF) a year, does **not** influence the calculation of the social security contributions, nor does it affect the calculation of the withholding tax on earned income. Unlike other social security contributions, it is not deductible.

On the other hand, the deductions from pensions applied as from January 1st, 1995 to pensions the monthly amount of which exceeds € 991.57 (40,000 BEF) are assimilated to social contributions and are thus deductible.

### C. Deduction of expenses

#### **ACTUAL EXPENSES**

The deductibility of professional expenses is a general principle which applies to **all categories of income**, including replacement income.

May be deducted, expenses the taxpayer has incurred or borne during the assessment period **with a view to acquiring or preserving taxable income**, provided he can establish the reality of such expenditures and the amount thereof.

As regards commuting expenses, a distinction should be made between expenses borne in respect of a personal vehicle and others.

- Where the expenses are incurred in connexion with a personal vehicle, the deductibility is limited to € 0.15 per kilometre. Where several members of a family travel together, the deduction will be granted to only one of them;
- Where the travel expenses have been incurred by any other means, fixed professional expenses (€ 0.15 per kilometre) are granted, the maximum distance between home and work being set at 25 kilometres in the absence of evidence. Where a chargeable person proves higher real costs, he may deduct the latter entirely.

Beside commuter expenses, actual expenses can cover, among other things :

- expenses relating to real estate or parts thereof used for a commercial or professional activity: shop premises, offices of a notary, lawyer, doctor, insurance agent, etc.;
- insurance premiums, commissions, brokerage expenses, advertising expenses, training costs, etc.;
- additional insurance contributions in respect of disablement resulting from sickness or invalidity;
- personnel costs;
- depreciation of property used for a professional activity <sup>(12)</sup>;
- levies and taxes which don't directly relate to taxable income: non-deductible withholding tax on real estate income, road tax, local taxes and indirect taxes, including increases and default interest;
- interest on loans contracted with third parties and engaged in the enterprise.

Are not deductible:

- personal expenses;
- fines and penalties;
- expenses exceeding the professional requirements to an unreasonable extent;
- expenses relating to clothing, with the exception of special professional clothing;
- 50% of restaurant expenses, entertainment allowances and business gifts;
- travel expenses other than those relating to commuting : 25% of the portion of car expenses incurred in the performance of one's duties excluding fuel (fuel used for professional purposes is totally deductible);
- the PIT and additional crisis surcharge payable to the State, to the municipalities and to the conurbation of Brussels district, as well as deductible withholding taxes and advance payments related thereto;
- interest paid on loans contracted with third parties by company directors with a view to the subscription to shares in a (resident) company from which they receive remunerations in the course of the taxable period.

### FLAT-RATE EXPENSES

For certain categories of earned income, the tax code provides **flat-rate expenses** which substitute actual expenses, unless the latter are higher.

The basis for calculation of the flat-rate expenses is the gross taxable amount, less social security contributions and contributions assimilated thereto <sup>(13)</sup>.

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<sup>12</sup> The way depreciation is taken into account by the tax law will receive ample treatment in chapter 3 (Provisions common to PIT and CIT). See page 62.

<sup>13</sup> That is to say the deductible part of contributions to recognized mutual insurance companies; see above, page 18.

For **company directors** the flat-rate deduction is set at 5% of the basis of calculation, with a maximum of € 2,880 (116,179 BEF).

The same € 2,880 (116,179 BEF) limit applies to the flat-rate expenses which may be awarded to **employees** and **members of a liberal profession** <sup>(14)</sup>; these are calculated according to the scale below.

*Table 1. 3  
Flat-rate allowable professional expenses*

Basis of calculation in €			Professional expenses	
			lower limit	above the limit
0	to	4,320	0	20%
4,320	to	8,580	864	10%
8,580	to	14,280	1,290	5%
14,280		and more	1,575	3%
in BEF				
0	to	174,268	0	20%
174,268	to	346,116	34,854	10%
346,116	to	576,054	52,039	5%
576,054		and more	63,536	3%

An additional deduction for flat rate expenses can be granted to **employees** when the distance between their home and their work is at least 75 km.

*Table 1. 4  
Additional allowable professional flat-rate expenses*

Distance between home and work			Additional fixed amount	
			in €	in BEF
75	-	100 km	90	3,631
101	-	125 km	140	5,648
126 km		and more	200	8,068

#### DEDUCTION OF EXPENSES

Where the taxable earned income includes income which is taxable separately <sup>(15)</sup>, professional expenses are deducted as follows :

- in proportion to the aggregate taxable income and separately taxable income, in the case of flat-rate expenses,
- preferentially on aggregate taxable income, in the case of actual expenses.

<sup>14</sup> This maximum is reached at a basis of calculation of € 57,780 (2,330,844 BEF).

<sup>15</sup> For example arrears, compensation for loss of employment and certain capital gains.

#### D. Economic exemptions

The following can then be deducted from **profits** after expenses by virtue of tax provisions in favour of investment and employment :

- tax exemption for additional staff employed in the field of scientific research, for the development of the technological potential and for heads of exportation and total quality departments;
- tax exemption for additional staff in small and medium sized companies;
- investment deductions.

Taxpayers declaring **proceeds** are only eligible for the investment allowance and for the tax exemption in respect of additional staff taken on in small and medium sized companies.

These measures are common to PIT and CIT. They are described in Chapter 3.

Tax payers declaring profits and proceeds are eligible for a tax credit if they have increased the « own assets » engaged in their company. This is explained in section 1.4.7 <sup>(16)</sup>.

#### E. Deduction of losses

##### **LOSSES INCURRED IN THE CURRENT TAX YEAR**

The losses a taxpayer incurs in the course of a taxable period in the framework of one professional activity are set off against the profits the same taxpayer realizes in the same taxable period in the framework of another activity. The losses are first deducted from the aggregate taxable income, the remainder then being deducted proportionally from the different kinds of separately taxable income.

##### **LOSSES INCURRED IN PREVIOUS TAX PERIODS**

Losses incurred by a taxpayer in the course of **previous** tax periods can be set off by him against profits from subsequent tax periods with no time limit.

#### F. Allocation of the assisting spouse quota and the marital quotient

##### **ASSISTING SPOUSE QUOTA**

A self-employed taxpayer (trader or member of a liberal profession) who actually receives assistance from his/her spouse can allocate a portion of his/her net income to the spouse.

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<sup>16</sup> See page 40.

This allocation is only allowed where the spouse who is to receive the quota has not earned a professional income amounting to more than € 10,020 (404,206 BEF) (after expenses and losses) from a separate activity.

This quota **constitutes** for the recipient **a source of earned income** from independent activity from which can be deducted **any recoverable losses** which were not deductible from his/her other own income. Contributions to an additional pension paid by the assisting spouse entitle to a tax reduction <sup>(17)</sup>.

### **MARITAL QUOTIENT**

The marital quotient can be awarded when the earned income of one of the spouses does not exceed 30% of the couple's total earned income.

The amount then allocated is set at 30% of the total net earned income, **less the own income of the spouse enjoying the quotient**. It cannot exceed € 7,710 (311,021 BEF).

The spouse who receives the marital quotient can deduct from the amount received the **recoverable losses** which could not be deducted from his/her other own income.

### G. Compensation for losses between spouses

Where the income of one of the spouses is negative, the loss can be deducted from the income of the other spouse, after taking into account all the deductions to which the latter is entitled. The amount of the transferable losses cannot exceed the income of the spouse to whose income the deduction applies.

### **1.3. Expenses entitling to a tax relief**

Certain expenses entitle to a tax relief. The terms and conditions for the granting of the fiscal advantage are detailed hereafter. The deductions are grouped in two categories : first those related to long-term savings and to real estate investments, then the other types of expenses. For each of these expenses will be stipulated how they are granted, on what conditions and to what extent.

The tax advantage can take three forms :

- a deduction from the total net income,
- a tax reduction computed at the « special average rate » <sup>(18)</sup>,
- a tax reduction at the marginal rate.

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<sup>17</sup> See below, page 27.

<sup>18</sup> This « special average rate » is explained hereafter at page 35.

### 1.3.1. Long-term savings and investment in real property

#### A. Life insurance premiums

These premiums entitle to a tax reduction, provided the following **conditions** are all met with :

- the contract was signed by the taxpayer before the age of 65 (man) or 60 (woman),
- where it includes a life bonus, it must have a minimum duration of ten years,
- the bonuses must be stipulated : in the event of life, in favour of the taxpayer; in the event of death, in favour of the spouse or relatives up to the second degree.

The deductible amount **for each spouse** is **limited** :

- to 15% of the first bracket of € 1,440 (58,089 BEF) of earned income, and to 6% beyond;
- with a maximum of € 1,730 (69,788 BEF).

This limit applies to the combined life insurance premiums and mortgage capital repayments (see below, B).

In principle, life insurance premiums entitle to the tax reduction for long-term savings, which is granted at the « **special average rate** ».

They can entitle to the **increased tax reduction for savings for house purchase**, which is granted at the **marginal rate**, if the following conditions are all met :

- the life insurance is assigned exclusively to the amortization or securing of a mortgage loan;
- that mortgage loan was contracted with a view to constructing, acquiring or renovating the taxpayer's dwelling-house <sup>(19)</sup>;
- that house was the taxpayer's sole dwelling-house when the contract was signed.

The tax reduction for savings for house purchase is only granted within the limits of a **first bracket**, computed on the basis of the amounts detailed in Table 1.5, increased by 5, 10, 20 or 30%, depending on the number (1, 2, 3 or more than 3) of the taxpayer's dependent children on January 1st of the year which follows the year in which the life insurance contract was signed.

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<sup>19</sup> i.e. the house whose cadastral income is entitled to the flat-rate deduction. See above, page 9.

**Table 1. 5**  
**Basic amounts of the loan entitling to a tax reduction for savings for house purchase**

Year in which the insurance contract was taken out	Basic amount of loan entitling to tax reduction for house purchase	
	in €	in BEF
1989	49,578.71	2,000,000
1990	51,115.64	2,062,000
1991	52,875.69	2,133,000
1992 to 1998	54,536.58	2,200,000
1999	55,057.15	2,221,000
2000	55,652.10	2,245,000
2001	57,570.00	2,322,368

### B. Mortgage capital repayments

Two types of contract should be distinguished : contracts concluded as from 01.01.1989 and which do not overturn existing contracts <sup>(20)</sup> and contracts concluded before 1989.

As regards **contracts entered into as from 01.01.1989**, the mortgage capital repayments entitling to a tax reduction for saving for house purchase are limited in accordance with the year of subscription; the amounts are those in Table 1.5.

If, however, the loan has been entered into with a view to constructing, acquiring or renovating a house situated in Belgium which, at the time the loan was contracted, was the taxpayer's sole dwelling-house, the basic amount is increased by 5, 10, 20 or 30% depending on the number of the taxpayer's dependent children (1, 2, 3 or more than 3) on January 1st of the year following the year in which the loan was taken out.

As to **contracts entered into before 01.01.1989**, the amount of the loan for which a tax reduction is granted differs according to whether it relates to a « **social** », a « **medium sized** » or a « **large** » house :

- in the case of "a social house", the reimbursed capital is totally deductible;
- deductibility is disallowed in the case of "large" houses;
- in the case of "medium sized" houses, the reimbursed capital for which this deduction can be granted is limited :
  - for contracts concluded after 30.04.1986 : to the part concerning the first bracket of € 49,578.70 (2,000,000 BEF) of the loan, if the loan was granted for the construction or purchase of a new dwelling house;
  - in all other cases : to the part concerning the first bracket of € 9,915.74 (400,000 BEF).

In all cases, deductibility only applies where the house is located in Belgium. The loan must have been contracted with a company having its seat in a Member State of the EU. No balance due insurance is required any more.

<sup>20</sup> Hereinafter, contracts taken out as of 1989 in exchange of existing contracts are to be assimilated to contracts concluded before 1989.



C. Mortgage interests

Interests on loans specifically entered into for the purpose of acquiring or maintaining real estate can be deducted from taxable real estate income up to the amount of the latter. The remainder is eligible for an additional deduction when the loan has been entered into in order to finance a new construction or important renovation works. This deduction applies to the **total net income**.

**THE TERMS AND CONDITIONS FOR THE DEDUCTION ARE THE FOLLOWING :**

- it must be a mortgage loan contracted after 30.04.1986 for at least 10 years;
- it must have been concluded with a view to constructing a house, acquiring a newly built house or renovating a house that is to serve as the taxpayer's **sole** dwelling house ;
- in the case of renovation, the work must amount to at least € 22,800 (919,750 BEF) inclusive of VAT, it must have been carried out by a registered contractor and, if the loan was contracted between May 1st, 1986 and October 31st, 1995, the first occupation of the house must date back 20 years or more from the day the loan was secured. If the loan was entered into as from November 1st, 1995, the first occupation must date back 15 years at least from the day the loan was secured.

**COMPUTATION OF THE DEDUCTIBLE AMOUNT**

The first restriction applying to the deductible amount is the amount of the loan. The deductible amount is measured as an annually decreasing percentage thereof.

In respect of newly built houses, the basic amounts of the maximum eligible loans are the figures in Table 1.5 i.e. € 57,570 (2,322,368 BEF). In respect of renovation work, these ceilings are to be halved and rounded to € 28,780 (1,160,982 BEF) <sup>(21)</sup>.

In both cases the basic amount corresponding to the year of acquisition remains unaltered for the whole period for which the additional deduction is granted.

The basic amount is increased by 5, 10, 20 or 30% according to the number of the taxpayer's dependent children as of **January 1st of the year following the year in which the loan was taken out**.

As regards work carried out in 2001, the eligible amount of the loan shall not exceed :

*Table 1. 6  
Maximum qualifying amount for the computation of the additional  
deduction of mortgage interests*

Number of dependent children	New construction		renovation	
	€	BEF	€	BEF
0	57.570	2.322.368	28.780	1.160.982
1	60.440	2.438.144	30.220	1.219.072
2	63.320	2.554.322	31.660	1.277.161
3	69.080	2.786.680	34.540	1.393.340
4 and more	74.830	3.018.635	37.420	1.509.519

That restricted deduction is then limited to a percentage which determines the deduction actually to be applied :

<sup>21</sup> In 1991 the ceiling for « renovation » was € 26,450.24 (1,067,000 BEF) and not the half of € 52,875.69 (2,133,000 BEF).

- from the first (<sup>22</sup>) to the fifth year, 80%,
- for the sixth year, 70%,
- for the seventh year, 60%,
- for the eighth year, 50%,
- for the ninth year, 40%,
- for the tenth year, 30%,
- for the eleventh year, 20%,
- for the twelfth year, 10%.

The deduction is made in proportion to the income of each spouse.

*Example*

*A family composed of a couple and two dependent children takes out a € 100,000 loan in order to construct a dwelling-house. The loan is secured by an endowment insurance reconstituting the capital borrowed at an interest rate of 6%.*

*The cadastral income is € 2,000. For the first year, the remainder of the interest not covered by the standard deduction is € 4,000. After taking into account the ceiling on the loan (€ 63,320 with respect to a new construction, assumed there two dependent children), the additional deduction will allow them to deduct 80% of € 2,533, i.e. € 2,026 from their total net incomes. For the subsequent years the deduction will evolve as shown in the table hereafter (assuming a fixed interest rate and an annual 2% indexation of the cadastral income).*

	<i>Cadastral income</i>	<i>Amount of interest</i>	<i>Standard deduction</i>	<i>Non-deducted balance</i>	<i>After application of ceiling</i>	<i>Deductible quota</i>	<i>Additional deduction granted</i>
1	2,000	6,000	2,000	4,000	2,533	80%	2,026
2	2,040	6,000	2,040	3,960	2,507	80%	2,006
3	2,081	6,000	2,081	3,919	2,482	80%	1,985
4	2,122	6,000	2,122	3,878	2,455	80%	1,964
5	2,165	6,000	2,165	3,835	2,428	80%	1,943
6	2,208	6,000	2,208	3,792	2,401	70%	1,681
7	2,252	6,000	2,252	3,748	2,373	60%	1,424
8	2,297	6,000	2,297	3,703	2,345	50%	1,172
9	2,343	6,000	2,343	3,657	2,315	40%	926
10	2,390	6,000	2,390	3,610	2,286	30%	686
11	2,438	6,000	2,438	3,562	2,255	20%	451
12	2,487	6,000	2,487	3,513	2,225	10%	222

**D. Pension saving schemes** (<sup>23</sup>)

Sums assigned to a pension savings scheme are deductible up to a limit of € 580 (23,397 BEF) for each spouse.

<sup>22</sup> The first year is the one as from which the cadastral income is taxable.

<sup>23</sup> The fiscal regime of pension savings schemes is dealt with more explicitly in Part 3 of the Survey; see pages 205 and following.

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E. Group insurance and pension funds <sup>(24)</sup>

Personal premiums for group insurance contracts and pension funds entitle to a **tax reduction** only if the following conditions are satisfied :

- the premiums must be paid to an insurance company or a pension fund established in Belgium;
- the statutory and extra-statutory benefits paid out upon retirement, expressed in terms of annuities, may not exceed 80% of the final regular gross yearly salary.

F. Purchase of employers' shares

The purchase of shares entitles to a tax reduction only if following conditions are all met :

- the taxpayer must be a salary or wage earner in the company or in a subsidiary or a sub-subsidiary thereof;
- the shares must be subscribed to at the time the company is constituted or when there is an increase in the company's capital;
- the company issuing the shares must be liable to CIT;
- supporting documents establishing the purchase of the shares by the taxpayer and his still holding them at the end of the tax period must be enclosed with the return.

The deductible amount is set at € 580 (23,397 BEF) for each spouse fulfilling these conditions. This deduction cannot be cumulated <sup>(25)</sup> with the deduction for pension savings schemes.

G. Additional pension contributions by assisting spouse

A self-employed taxpayer's spouse can be allocated <sup>(26)</sup> a portion of the latter's income. If he/she submits himself/herself voluntarily to the social statute of the self-employed, he/she is allowed to subscribe to an insurance in order to constitute a supplementary pension.

The premiums then paid are not considered social contributions, which would be directly deductible from income, but entitle to a **tax reduction at the « special average rate »**.

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<sup>24</sup> The fiscal regime of group-insurance is dealt with more in explicitly in Part 3 of this Survey. See page 205 and following.

<sup>25</sup> The incompatibility is evaluated for each spouse separately.

<sup>26</sup> See supra, page 21.

### 1.3.2. *Other expenses*

#### A. Expenses for child care

Child care expenses are **deductible from the total net income** when the following conditions are fulfilled :

- the taxpayer must have received earned income: salaries, profits, proceeds,... including replacement income such as pensions, unemployment benefits, etc.;
- the child must be dependent on the taxpayer and must be less than 3 years old;
- the child care expenses must have been paid, either to institutions recognized, subsidized or controlled by "Kind en Gezin", "Office de la Naissance et de l'Enfance" or by the executive authorities of the German Community or to independent host families or day nurseries placed under the supervision of the above mentioned institutions;
- the amount of these expenses must be established by supporting documents enclosed with the tax return.

The deductible amount is the day's rate actually paid and is limited to € 11.20 (452 BEF) per day of care and per child.

The deduction is made proportionately to the income of each spouse.

#### B. Maintenance allowances

Maintenance allowances are **deductible from the total net income** when the following conditions are met :

- the beneficiary is not a member of the taxpayer's household;
- the maintenance allowance is payable in pursuance of the civil code or the judicial proceedings code;
- the payments are made on a regular basis or, if they are made in a taxable period subsequent to the period the payment is related to, they are made in pursuance of a retroactive Court order.

The deduction is limited to 80% of the sums paid.

Maintenance allowances paid out in respect of a liability of one of the spouses are deductible from the latter's income; where it is paid out in respect of a joint liability of both spouses, they are deductible proportionately to their incomes.

#### C. Gifts

Donations made to recognized institutions are **deductible from the total net income**, provided they amount to at least € 24.79 (1,000 BEF) per beneficiary institution. The total amount thus deductible cannot exceed 10% of the net income or € 287,830 (11,611,033 BEF). The deduction is made proportionately to the income of each spouse.

Donations made in favour of Belgian universities and scientific institutions cease qualifying for the computation of the upper limit when they are actually deducted from prizes and subsidies taxed as miscellaneous income.

D. Payment of domestic servants

This deduction is only awarded for one domestic personnel member and the following conditions must be met :

- the taxpayer must be registered as an employer at the National Social Security Office;
- upon engagement, the employee must have been receiving the subsistence allowance or have been receiving full unemployment benefits for 6 months at least;
- the remunerations must be subject to social security payments and must exceed € 2,880 (116,179 BEF).

The deduction is limited to 50% of the salary, with an absolute maximum of € 5,760 (232,358 BEF).

The amount is **deducted from the total net income**, proportionately to the income of each spouse.

E. LEA cheques and service cheques

Sums paid out to local employment agencies (LEA) upon the acquisition and use of LEA cheques are entitled to a **tax reduction at the « special average rate »**.

The **conditions** to be met are :

- the expense is made outside the context of any business activity;
- the expense is made to a local employment agency (LEA) for work carried out by a person with a LEA contract;
- the taxpayer, as documentary evidence, encloses with his income tax return the certificate referred to in the regulations concerning the LEAs delivered by the issuer of the LEA cheques.

Service cheques fall within the tax regime applying to LEA cheques. Service cheques are acquired by natural persons wishing to appeal to community services (household work, child minding, home nursing for elderly, ill or handicapped people), but not within the framework of a professional activity. These cheques are issued by companies recognized by the National Employment Service. The (private) person having acquired the cheques then enters into a contract with one of those recognized companies and uses the cheques to pay for the services performed.

These expenses entitle to a tax reduction up to the nominal value of the LEA cheques and service cheques issued in the taxpayer's name and purchased from the issuer in 2001; where appropriate that amount must be diminished by the nominal value of the LEA cheques returned to the issuer in the course of the year; in any case, the amount taken into consideration for the rebate is limited to € 2,080 (83,970 BEF).

*F. Expenses relating to the maintenance and restoration of classified monuments*

The expenses deductible under this section are the ones incurred by the owner for the maintenance or restoration of classified monuments or sites which are open to the public and not leased. The deduction is limited to 50% of the expenses not covered by subsidies, with a maximum of € 27,838.44 (1,123,000 BEF).

The amount is deducted from the **total net income**, proportionately to the income of each spouse.

*G. Sums paid to Treasury by certain civil servants for plurality of offices*

In certain cases, civil servants holding more than one office concurrently must return sums received of which the total amount exceeds an authorized limit, to the State.

These payments are totally deductible and the deduction is made proportionately to the income of each spouse.

## 1.4. Computation of the tax

### 1.4.0. General principles

	Tax according to scale (1.4.1.)
-	tax reduction for dependents (1.4.2.)
-	tax reductions for long-term savings and for expenses paid for work or services performed in the framework of local employment agencies, and increased tax reduction for savings for house purchase (1.4.3)
-	tax reduction for replacement income (1.4.4.)
=	reduced basic tax
-	tax reduction for foreign income (1.4.5.)
=	<b>principal of ATI</b> (aggregated taxable income)
+	tax on separately taxed income (1.4.6.)
=	<b>principal</b>
-	withholding taxes, tax credits, advance payments and other allowable items (1.4.7.)
+	increases for no or insufficient advance payment (1.4.8.)
-	bonus for advance payment (1.4.8.)
=	<b>« State » tax</b>
+	regional and municipal surtaxes (1.4.9.)
+	additional crisis tax (1.4.10.)
+	tax increase (1.4.11.)
=	<b>amount payable by or to the taxpayer (*)</b>

(\*) *The amount eventually paid by or refunded to the taxpayer such as stated on the notice of assessment in respect of personal income tax, comprises the tax, the balance of the special social security contribution and the balance obtained after applying the social exemption for the patient's contribution towards medical cost.*

**1.4.1. Tax rates**

The rates applicable to 2001 income are as follows :

**Table 1. 7**  
**Progressive rate**

Bracket of taxable income				Marginal rate
in €		in BEF		
0	-	6,570	0 - 265,033	25 %
6,570	-	8,710	265,033 - 351,361	30 %
8,710	-	12,420	351,361 - 501,022	40 %
12,420	-	28,540	501,022 - 1,151,301	45 %
28,540	-	42,810	1,151,301 - 1,726,951	50 %
42,810	-	62,790	1,726,951 - 2,532,942	52.5 %
62,790	and more		2,532,942 and more	55%

**1.4.2. Exempt income and deduction for dependents**

A portion of the net global taxable income, varying according to the composition of the household, is exempt from tax. The tax exempt income portion is in the first place composed of the exempt income granted to each of the spouses. These amounts are then increased by the exempt income for dependents and for certain particular family situations.

Where the tax exempt slice of one of the spouses exceeds the income it is credited against, the remainder of the exempted slice can be transferred onto the income of the other spouse. These exemptions are calculated "from the bottom up".

**A. Exempted income of the taxpayer and his/her spouse**

The basic exemption is € 5,350 (215,818 BEF) for a single person and € 4,240 (171,041 BEF) for each spouse.

**B. Exemptions for dependent children**

A child is considered "*dependent*" if three conditions are met :

- on January 1st of the tax year (in this case : 01.01.2002) he is a member of the family <sup>(27)</sup>,
- he has not had personal means of subsistence exceeding a net amount of € 1,960 (79,066 BEF) <sup>(28)</sup>,
- he has not been in receipt of any remuneration which was a business expense for the taxpayer.

<sup>27</sup> A child deceased during the taxable period is deemed to be a member of the taxpayer's family on January 1st of the tax year, provided it was already depending on him for the previous tax year or was born and deceased during the taxable period.

<sup>28</sup> That amount is raised to € 3,390 (136,752 BEF) for an isolated person's dependent children, and to € 3,920 (158,132 BEF) for an isolated person's disabled dependent children.



In order to determine the net amount of the means of subsistence, account must be taken of all regular or casual income, taxable or not, regardless of their designation.

The following, however, are not taken into consideration :

- family allowances, maternity allowances, adoption premiums, scholarships and premiums for pre-marital saving ;
- allowances chargeable to the Treasury when paid to disabled persons ;
- remunerations received by disabled persons following their employment at a recognized sheltered workshop ;
- maintenance allowances or additional maintenance allowances which, pursuant to a Court order determining or increasing their amount with retroactive effect, are paid to the taxpayer after the end of the tax period they relate to.

In order to determine the net amount of the means of subsistence, their gross amount must be diminished by the expenses the taxpayer proves to have made or borne in order to acquire or maintain these means. Failing such evidential data, the deductible expenses are fixed at 20% of the gross amount of the means of subsistence (with a minimum of € 330 (13,312 BEF) in the case of remunerations of employed persons or proceeds from a professional activity).

Finally, it should be mentioned that, when the income from real property and movable assets accruing to children is aggregated with the income of their parents because the latter have the legal usufruct of their children's income, the said children shall be considered as dependent, irrespective of the amount of their income.

Exemptions for dependent children are allocated **by priority to the spouse with the higher tax base.**

*Table 1.8.  
Exemptions for dependent children*

Rank of the child	Total exemption		Exemption for that child	
	€	BEF	€	BEF
1	1,140	45,987	1,140	45,987
2	2,920	117,793	1,780	71,806
3	6,550	264,226	3,630	146,433
4	10,600	427,603	4,050	163,377

For any child after the fourth, the exemption amounts to € 4,050 (163,377 BEF) per child.

An additional exemption of € 430 (17,346 BEF) is awarded for each dependent child who is less than three years old and for whom the deduction for child care expenses has not been requested.

A disabled child counts for two (it will be awarded the deduction according to its own rank plus the reduction granted to the child next in rank) and any child having deceased during the tax period remains dependent for that period.

*Example*

*A couple with three dependent children has a taxable net income of € 22,500 which, after all deductions, breaks down as follows:*

-	taxpayer	:	€ 15,000,
-	spouse	:	€ 7,500.

*The taxpayer is awarded an exemption of € 10,790 which is calculated as follows:*

-	exemption for the spouse	:	€ 4,240,
-	three dependent children	:	€ 6,550.

*This exempted bracket comprises the first two brackets of the progressive rate (Table 1.7).*

*The remaining income is taxed at 40% up to € 12,420, i.e. € 1,630, and at 45% above this limit.*

*The other spouse is entitled to an exemption of € 4,240. So € 2,330 will be taxed at 25% and the remaining will be taxed at 30%.*

If the parents actually have an alternative custody of the children, the deduction for dependent children may be split up between them. They will have to apply for this deduction though and the application has to be renewed every year. The deduction allowed will be determined without taking into consideration the other children of the household ; it will then be halved, one half be added to the other deductions if there are any.

C. Special family situations

The other exemptions are as follows :

-	other dependent persons	€ 1,140 (45,987 BEF)
-	disabled spouse	€ 1,140 (45,987 BEF)
-	disabled dependent persons <sup>(29)</sup>	€ 1,140 (45,987 BEF)
-	widow(er) with dependent children	€ 1,140 (45,987 BEF)
-	single parent family	€ 1,140 (45,987 BEF)
-	spouse whose income does not exceed € 1,960 (79,066 BEF) : in respect of the year of marriage	€ 1,140 (45,987 BEF)

In respect of the year of death :

- the surviving spouse is awarded a tax exemption amounting to the (positive) difference between € 7,610 (306,987 BEF) and the net taxable professional income of the deceased spouse ;
- the succession is awarded a tax exemption amounting to the difference between € 7,610 (306,987 BEF) and the net taxable professional income of the surviving spouse.

The result of the additional exemptions may not be that the total tax due by the surviving spouse and the succession is inferior to the tax that would have been due if the deceased and the surviving spouse had been taxed as a married couple.

<sup>29</sup>

With the exception of children.

### **1.4.3. Expenses entitling to a tax reduction**

As stated in Section 1.3, certain expenses entitle to a tax reduction. Are concerned :

- individual life insurance premiums;
- mortgage capital repayments;
- sums paid for the acquisition of employer's shares;
- sums paid for pension savings schemes;
- personal premiums for group insurance contracts or pension funds;
- contributions by assisting spouses in order to constitute a supplementary pension;
- LEA cheques and service cheques.

These reductions are computed separately for each of the spouses on the basis of their expenses restricted in accordance with the rules set out in Section 1.3.

#### **INCREASED TAX REDUCTION FOR SAVINGS FOR HOUSE PURCHASE**

This reduction applies, within the limits set out in Section 1.3., to

- individual life insurance premiums assigned to the amortization or securing of a mortgage loan,
- mortgage capital reimbursements.

It is granted **at the marginal rate** for each spouse.

#### **OTHER TAX REDUCTIONS**

Are concerned :

- LEA cheques and service cheques to a fiscal advantage,
- personal premiums for group insurance contracts or pension funds,
- sums paid for the acquisition of employer's shares,
- sums paid for pension savings schemes,

and, insofar as they do not qualify for the increased tax reduction for savings for house purchase (see above),

- individual life insurance premiums,
- mortgage capital repayments.

These reductions are granted at the « **special average rate** », computed separately for each of the spouses

- by subtracting from the tax calculated according to the scales (see section 1.4.1) the tax relating to the exempt portion granted to that spouse (see 1.4.2, section A),
- by dividing the result obtained by the aggregated taxable income of that spouse.

That rate cannot be less than 30 %, nor can it exceed 40 %.

Both the reduction for long-term savings and the increased reduction for housing apply

When both reductions are applicable at the same time and the amounts paid exceed the limitation with respect to income, i.e. 15% of the first bracket of € 1,440 (58,089 BEF) and 6% above that amount with a maximum of € 1,730 (69,788 BEF), priority is given to the amounts entering in line for the increased tax reduction.

**1.4.4. Tax reductions on replacement income**

Pensions, early retirement pensions, unemployment benefits, sickness or disablement benefits and all other relevant benefits allocated as a partial or total compensation for temporary losses of gains, profits or remunerations are entitled to a tax reduction.

This reduction is granted only once per household. Its computation is based on the basic amount, indexed annually (A). Then three restrictions apply to that amount :

- a restriction according to the composition of the incomes, i.e. the relation between the incomes entitling to a reduction and the total net incomes; this relation will hereafter be called « horizontal limitation » (B);
- a restriction according to the level of the aggregate taxable income : this restriction will hereafter be called « vertical limitation » (C);
- a restriction according to the tax relating proportionally to the incomes concerned (D).

In certain cases an additional reduction is granted so as to reduce the tax to nil (E).

**A. Basic amounts**

For income 2001 (tax year 2002), the amounts of the basic reductions are :

**Table 1. 9**  
**Basic amounts of tax reductions for replacement income**

Categories of income	Basic amount of reduction			
	Single person		Spouse	
	€	BEF	€	BEF
Pensions, early retirement pensions (new regime)	1,550	62,527	1,810	73,015
Early retirement pensions (old regime) (*)	2,800	112,952	3,060	123,440
Standard unemployment benefits	1,550	62,527	1,810	73,015
58 plus unemployment benefits (**)	1,550	62,527	1,810	73,015
Sickness/invalidity	1,990	80,276	2,250	90,765
Other replacement incomes	1,550	62,527	1,810	73,015

(\*) These are the early retirement benefits granted pursuant to the collective labour agreements declared generally compulsory before January 1st, 1986, or having come into force before January 1st, 1987. The other early retirement benefits are assimilated to pensions.

(\*\*) These are the benefits granted to unemployed persons having reached the age of 58 as of January 1st of the tax year (in this case : 01.01.2002 and enjoying a seniority supplement.

**B. « Horizontal » limitation**

Each of the reductions is restricted by multiplying it by a fraction corresponding to the relation between the income entitling to a reduction and the total net income. A single person who has received unemployment benefits amounting to € 2,500 and net earned income amounting to € 10,000, will thus be granted one fifth of the basic amount only.

**C. « Vertical » limitation**

This restriction is related to the total aggregate taxable income. There are two series of limits : the general rule and the limits applying to standard unemployment benefit.

**GENERAL RULE**

The general rule applies to all categories of income mentioned in Table 1.9, except the standard unemployment benefits.

The tax reduction which subsists after the horizontal limitation is maintained in its entirety up to an aggregate taxable income of € 17,150 (691,829 BEF); it then diminishes gradually and is restricted to one third of its amount as from an ATI of € 34,310 (1,384,062 BEF).

The vertical reduction (R') thus limited is calculated according to the tax reduction subsisting after application of the horizontal limitation (R), as seen in Table 1.10.

**Table 1. 10**  
***Vertical limitation of the tax reductions : general rule***

Brackets of ATI, in €	Limitation of the reduction, in €
Less than € 17,150	$R' = R$
Between € 17,150 and € 34,310	$R' : [R \cdot 1/3] + [R \cdot 2/3 \cdot (34,310 - ATI) / 17,160]$
More than € 34,310	$R' = R \cdot 1/3$
Brackets of ATI, in BEF	Limitation of the reduction, in BEF
Less than 691,829 BEF	$R' = R$
Between 691,829 and 1,384,062 BEF	$R' : [R \cdot 1/3] + [R \cdot 2/3 \cdot (1,384,062 - ATI) / 692,233]$
More than 1,384,062 BEF	$R' = R \cdot 1/3$

**PARTICULAR RULE APPLYING TO STANDARD UNEMPLOYMENT BENEFITS**

The tax reduction subsisting after application of the horizontal limitation is maintained in its entirety up to an ATI of € 17,150 (691,829 BEF); it then diminishes gradually and is no longer granted when the ATI amounts to € 21,410 (863,677 BEF).

The vertical reduction thus limited (R') is calculated according to the tax reduction subsisting after application of the horizontal limitation (R) as follows :

**Table 1. 11**  
**Vertical limitation of the tax reductions : standard unemployment benefits**

<i>Brackets of ATI, in €</i>	<i>Limitation of the reduction, in €</i>
Less than € 17,150	R'= R
Between € 17,150 and € 21,410	R': $R \cdot (21,410 - R.I.G.) / 4,260$
More than € 21,410	R'= 0
<i>Brackets of ATI, in BEF</i>	<i>Limitation of the reduction, in BEF</i>
Less than 691,829 BEF	R'= R
Between 691,829 BEF and 863,677 BEF	R': $R \cdot (863,677 - R.I.G.) / 171,848$
More than 863,677 BEF	R'= 0

**D.**    **Limitation to proportional tax**

The reduction remaining after these two limitations shall in no case exceed the part of the tax which relates proportionately to the income entitling to this tax relief. This limitation will apply, for example, where the basic amount of the reduction exceeds the taxpayers tax liability.

**E.**    **Cases where the tax is reduced to nil**

After the awarding of tax reductions for replacement income, the remaining tax is reduced to nil when the taxable income is made up exclusively of replacement incomes which do not exceed :

- in respect of benefits paid to elderly unemployed persons	€ 12,105.11	488,319 BEF
- in respect of unemployment benefits, pensions, « new » early retirement pensions and other forms of replacement income	€ 10,958.68	442,072 BEF
- in respect of sickness and invalidity insurance benefits	€ 12,176.31	491,191 BEF
- in respect of « old » early retirement payments	€ 14,393.64	580,638 BEF

**1.4.5. Tax reductions for foreign income**

Foreign income is in principle taxed in the country where it originates, i.e. the country where the activity is pursued and where the liable taxpayer resides. In order to avoid double taxation, international agreements provide for **exemption of these incomes**. Belgium applies the **progressiveness reserve** : foreign income is taken into account in order to calculate the tax rate.

At this stage of the calculation, only the part of the aggregate income originated in countries with which Belgium has signed a double taxation agreement is eligible for the tax reduction.

Where the foreign income originates from a country with which Belgium has signed no such agreement, the part of tax relating to this income is halved.

### 1.4.6. *Separate taxation and computation of the principal*

#### A. *Separate taxation*

The law has provided for separate taxation in respect of three categories of income :

- income from movable property,
- most miscellaneous income,
- certain types of non-periodical income: capital gains, arrears, dismissal compensation, amounts paid on due date in respect of group-insurance contracts, life insurance contracts or pension schemes.

These incomes escape aggregation and are taxed at special rates mentioned hereafter. Total aggregation (inclusion of this income in the ATI and application of the progressive rate) is nonetheless applied where doing so is to the taxpayer's advantage.

The choice is made for separately taxable income as a whole.

The tax on separately taxable income is calculated as follows :

#### **INCOME FROM MOVABLE PROPERTY**

The assessment rates vary between 15% and 25% according to the case : the conditions and terms are detailed in Table 1.2.

#### **MISCELLANEOUS INCOME**

The taxable amount of miscellaneous incomes has been detailed above <sup>(30)</sup>. The tax rates applying to these incomes are the following :

*Table 1. 12*  
*Rates of separately taxed miscellaneous income*

Type of income	Tax rates
Occasional profits and proceeds	33%
Prizes and subsidies	16.5%
Prizes attached to debenture bonds	25%
Income from sublease or from transfer of a lease	15% for post-01.03.1990 contracts and 25% in the other cases
Income from permission to place advertising boards	Idem
Income from sporting rights (fowling, fishing, shooting)	Idem
Capital gains from built property	16.5%
Capital gains from unbuilt property	33% if the capital gains are realized less than 5 years after the acquisition, 16.5% in the other cases

#### **EARNED INCOME**

<sup>30</sup> See page 12.

In many cases earned incomes which can enjoy the separate taxation are taxed at an average rate, calculated by dividing the reduced basic tax by the aggregate taxable income. As stated in the chart at the beginning of section 1.4, the reduced basic tax is the tax subsisting after application of the tax reductions for replacement income.

*Table 1. 13  
Separate taxation of earned income*

Type of income	Tax rate
Salary arrears, replacement income arrears	the previous year's average rate
Gross dismissal compensation > € 710 (28,641 BEF)	the previous year's average rate
Prepaid holiday pay	the current year's average rate
Arrears of maintenance allowances	the current year's average rate
Fee arrears	the current year's average rate
Capital gains from professional activities	16.5%
Surrender value from group insurance contracts, life insurance contracts and pension saving schemes	33% or 16.5% or 10% (*)

(\*) see Part III, chapter 2.

**B. Calculation of the principal**

The « principal » is calculated by adding :

- the tax payable on the ATI (after reduction for foreign income),
- and the tax payable on the separately taxable income.

It serves as a basis for the computation of the additional taxes and additional crisis surcharge.

**1.4.7. Allowance for withholding taxes, tax credit, advance payments and other allowable items**

**A. Tax credit for increase of « own assets »**

Taxpayers declaring profits or proceeds are entitled to a tax credit if they have increased the company's « own assets ». The company being a family business, the concept of « capital » used for CIT is inappropriate here. « Own assets » are measured by the difference between the fiscal value of the tangible assets put into the company and the amount of the liabilities assigned to the performance of the professional activity.

That tax credit amounts to 10% of the difference between :

- the fiscal value of the « own assets » at the end of the taxable period,
- and the highest amount those assets have come up to at the end of any of the three assessment years preceding the current taxable period.

The tax credit is limited to € 3,750 (151,275 BEF)



The amount of the tax credit may not exceed the part of the personal income tax relating to the profits and proceeds in respect of which the tax credit is granted. If the amount of the "principal" does not allow for a total deduction of the tax credit, the remainder can be carried over, for a period not exceeding three taxable periods, the method of calculation being always the same.

The tax credit set-off is subject to the condition that the taxpayer joins a certificate to his return asserting that he has made all relevant social security contributions he is liable to as a self-employed person.

**B. Withholding taxes, advance payments and other allowable items**

The following items are credited against the "principal" <sup>(31)</sup> :

- the fixed foreign tax credit (FFTC), inasmuch as it relates to securities invested in a professional activity ;
- the withholding tax actually due on the cadastral income of the personal dwelling-house, up to a maximum amount of 12.5% of the portion of the cadastral income that is actually included in the tax base.

These withholding taxes are not repayable: any quota exceeding the tax is not refunded to the taxpayer.

The following withholding taxes are allowable and refundable :

- the withholding tax on income from movable property;
- the withholding tax on earned income;
- the advance payments.

**1.4.8. Increases and bonuses**

Taxpayers declaring income from a self-employed activity must make advance payments, and a tax increase is applied when these payments are not made or when they are insufficient.

Moreover, any taxpayer can make advance payments to discharge the tax which is not covered by a withholding tax: these payments entitle the taxpayer to a tax bonus.

Increases and bonuses are calculated on the basis of a reference rate. **For 2001 income (tax year 2002), this rate is 5%.**

Advance payments must have been made :

- for the first quarter (AP1), no later than April 10th, 2001;
- for the second quarter (AP2) no later than July 10th, 2001;
- for the third quarter (AP3), no later than October 10th, 2001;
- for the fourth quarter (AP4), no later than December 20th, 2001.

Natural persons having begun their first self-employed activity are exempt from the tax increase due on profits incurred during the first three years of their self-employed activity.

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<sup>31</sup> The application of the FFTC and the tax on income from movable property is limited according to the time during which the securities are held.

## DIRECT TAXATION

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Any advance payment made by the taxpayer who is thus exempted entitles the taxpayer to a tax bonus in so far as the other conditions relating to the awarding of these rebates are fulfilled.

Increases and bonuses are calculated as follows :

*Table 1. 14*  
*Increases and bonuses for advance payments*

Increase	Reduction
<u>Base</u>	
- the tax calculated in respect of income from a self-employed activity considered separately or the tax which relates proportionally to this income, if it is lower;	the principal, increased to 107% less advance payments used to compensate for the increase due to the lack of advance payments and less withholding taxes, tax credit and items allowed on the principal.
- increased to 106%, less withholding taxes, tax credit and items which can be set off against the income thus increased.	
<u>Rate of increase</u>	
2.25 times the reference percentage, i.e. 11.25%	
<u>Amounts payable</u>	
AP1: 15% (3.0 x the reference rate)	AP1: 7.5% (1.5 x the reference rate)
AP2: 12.5% (2.5 x the reference rate)	AP2: 6.25% (1.25 x the reference rate)
AP3: 10% (2.0 x the reference rate)	AP3: 5% (1.0 x the reference rate)
AP4: 7.5% (1.5 x the reference rate)	AP4: 3.75% (0.75 x the reference rate)
A bonus is awarded for excess AP.	No bonus is awarded for excess AP.
<u>Adjustments</u>	
- the increase is reduced by 10%	None
- the increase is reduced to nil if it amounts to less than € 30 (1,210 BEF) or 1% of its base	
- contingent exemptions for (young) beginning self-employed	

### 1.4.9. Regional and municipal taxes

These are calculated at the appropriate rate which is specific to each municipality and which is based on the « principal ».

Taxpayers domiciled in the Flemish Region are awarded a € 61.97 (2,500 BEF) reduction per natural person domiciled in the Flemish Region and who is not dependent on another natural person.

### 1.4.10. Additional crisis surcharge

The additional crisis surcharge is a temporary measure, come into force in 1993. Its dismantling commences with the Law of December 24th, 1999 and is carried on with the Law of August 12th, 2000.

#### Base and rate of the initial regime

The base of the additional crisis surcharge is the tax due, in particular :

- the principal, i.e. the tax due on the aggregate taxable income and on the separately taxed income,
- except for income from movable property and miscellaneous movable incomes which are separately taxed.

#### Gradual decrease of the additional crisis surcharge (ACS)

As from tax year 2000 (1999 income), the rate of the additional crisis surcharge depends on the aggregate taxable income.

In respect of 2001 income, the ACS is computed as follows :

**Table 1. 15**  
**Degressiveness of the additional crisis surcharge**

Bracket of ATI, in €	Computation of additional crisis surcharge, in €
Up to 19,831.48	0%
From 19,831.48 to 21,070.95	0% + 1% (ATI – 19,831.48)/1,239.47
From 21,070.95 to 29,747.22	1%
From 29,747.22 to 30,986.69	1% + 1% (ATI – 29,747.22)/1,239.47
More than 30,986.69	2%
Bracket of ATI, in BEF	Computation of additional crisis surcharge, in BEF
Up to 800,000	0%
From 800,000 to 850,000	0% + 1% (ATI – 800,000)/50,000
From 850,000 to 1,200,000	1%
From 1,200,000 to 1,250,000	1% + 1% (ATI – 1,200,000)/50,000
More than 1,250,000	2%

**1.4.11. Tax increases****Principles**

The following tax increases may be applied in the event of overdue return, failure to make return, incomplete or incorrect return :

- either on the entirety of the taxes payable after the allowance of withholding taxes, advance payments, tax increases and bonuses;
- or proportionately to these taxes when the infringement relates to only part of the tax base.

**A. Rates of increase**

The rate of increase ranges from 10 to 200% depending on the seriousness and frequency of the infringements.

**Table 1. 16**  
**Rates of increase**

Nature of infringement	applicable rate
<b>A.</b> Incomplete or incorrect return or failure to make return owing to circumstances which are independent of the will of the taxpayer	NIHIL
<b>B.</b> Incomplete or incorrect return or failure to make return without intending to evade taxation : 1st infringement (not counting failure to declare as sub A) 2nd infringement 3rd infringement 4th and subsequent infringements	10% 20% 30% (as for C)
<b>C.</b> Incomplete or incorrect return or failure to make return with the intention to evade taxation : 1st infringement 2nd infringement 3rd infringement	50% 100% 200%
<b>D.</b> Incomplete or incorrect return or failure to make return with an inaccuracy, a deliberate or fraudulent omission, or the making use of forged documents in the course of an inspection in respect of tax liability, or the corruption or attempted corruption of a civil servant	200%

**B. Limit value of increase**

The total sum of the taxes payable on the income for which no return was made and the penalties applied thereto cannot exceed the income.



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## ANNEX TO CHAPTER 1 REFORM OF THE PERSONAL INCOME TAX

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The structure of the PIT reform rests on four key pillars.

- Pillar I comprises four measures whose main objective is the **reduction of the tax burden weighing on income from employment** : a tax credit on low incomes from professional activities ; an increase in the rate of the first bracket in the scale of flat-rate professional expenses ; the broadening of the central brackets in the scale ; the suppression of the higher marginal rates.
- Pillar II is the **neutrality with respect to lifestyles**. Its goal is to treat single persons in a similar way as spouses, by assimilating legal cohabitants to spouses. The main measures are : the alignment of the basis tax exempt quotas granted to single persons with those granted to spouses ; the granting of certain tax reductions for replacement incomes per spouse and no longer per family ; the generalization of the separate taxation, which only applied up to now to professional income (including replacement income).
- Pillar III of the tax reform groups the measures having as a common objective a **better taking into account of dependent children** : the tax reductions the latter entitle to become repayable, the maximum amount of own resources dependent children of single persons are entitled to is increased and the tax reduction granted to certain one-parent families is generalized and applies to all single persons with dependent child(ren).
- Pillar IV of the tax reform groups measures having as a common goal a **greener taxation** : one will find there the € 0.15 deduction for the first 25 km bracket of commuter journeys made otherwise than in an individual car as well as the introduction of a new tax expenditure in respect of thermal insulation or rational use of energy.

The general description of the reform given in this annex follows the same scheme as Chapter I, which details the broad guidelines of personal income tax. So it will first treat the chargeable units, then the modifications with respect to the establishment of the net income, (i.e. income without expenses and losses); next the modifications with respect to expenses which entitle to a fiscal advantage and finally the modifications with respect to the computation of the tax.

The reform is implemented progressively over the period covering the tax years 2002 to 2005, i.e. the 2001 to 2004 incomes. Table A.1 summarizes the schedule of the implementations.

*Table A.1  
Implementation schedule of the reform*

Income year	2001	2002	2003	2004
<b>I. Lowering of tax burden on income from employment</b>				
I.a. Tax credit on low incomes from professional activities		P	P	
I.b. Increase of flat-rate professional expenditure of wage and salary earners		P		
I.c. Broadening of central brackets of tax scale			P	
I.d. Suppression of higher marginal rates		P		
<b>II. Neutrality with respect to lifestyles</b>				
II.a. Alignment of tax exempt quotas			P	
II.b. Individualization of tax reductions on replacement incomes				
II.c. Generalization of separate taxation in respect of non-professional incomes				
<b>III. Better taking into account of dependent children</b>				
III.a. Repayable tax reductions				
III.b. Increase of own resources of single persons				
III.c. Tax exempt quotas for single persons with dependent child(ren)				
<b>IV. Greener taxation</b>				
IV.a. Deduction of commuter journeys				
IV.b. Expenditures in respect of energy saving				

P = partial entry into force – Gray tone = complete entry into force

Unless otherwise specified, all Euro-denominated amounts mentioned in this annex apply to 2002, whatever the year of their entry into force.

## 1. Chargeable units

The tax reform extends the logic of abandoning of aggregation (of the spouses' incomes) to the whole of the income and to the computation of the tax. So it goes further than the more separate taxation of real-estate income, movable income and miscellaneous income and it modifies the entire system<sup>(32)</sup>.

- Legal cohabitants are assimilated to spouses.
- The taxable income of each spouse is subject to a separate taxation.
- The principle of a separate taxation is combined however with several transfers or compensations between spouses in order to maintain the existing advantages in favour of married people.

<sup>32</sup> Entry into force : 2004 income, tax year 2005.



## 2. Determination of the net income (i.e. after deduction of expenses and losses)

### 2.1 *Real estate income* <sup>(33)</sup>

- Real estate income is no longer aggregated with the income of the spouse who has the higher professional income ; the owner of the estate is chargeable to the tax or the tax is portioned between the spouses where there is a community of property or a joint ownership. The same rule applies in respect of the deductibility of interest of loans and deductibility of sums paid for the constitution or transfer of long lease rights or similar land rights.
- Compensation between spouses applies where a real estate income becomes negative after deduction.
- The deduction for dwelling is granted to the sole owner-taxpayer or it is portioned in function of the quota detained by each of the spouses. It is granted per spouse and can't exceed the cadastral income of the dwelling of each spouse. This means that the single € 3,950 + € 330 (for the spouse) deduction is replaced by a € 3,950 deduction for each spouse. The € 330 deduction per dependent person is portioned the same way the cadastral income is, and the € 27,730 limit in respect of the additional deduction applies to each spouse.
- Compensation between spouses also applies if a negative income appears for one of them after application of the housing deduction.

### 2.2 *Income from movable property and miscellaneous income* <sup>(34)</sup>

Each spouse is subject to a separate taxation with regard to the amount of his/her :

- occasional profits and proceeds,
- prizes and subsidies,
- maintenance payments received.

The other incomes are attributed according to the personal and property rights or, if necessary, in two equal parts.

The same rule prevails in respect of income from movable property.

### 2.3 *Flat-rate professional expenses*

The rate of the first bracket in the scale of flat-rate expenses goes up from 20% to 25%. The rate concerned is the one that applies to the first € 4,420 bracket of salaries and profits.

This measure is introduced in two steps :

- as regards the 2002 income, tax year 2003, the rate goes up from 20% to 23%
- as regards the 2003 income, tax year 2004, the rate goes up from 23% to 25%.

<sup>33</sup> Entry into force : 2004 income, tax year 2005.

<sup>34</sup> Entry into force : 2004 income, tax year 2005.

## 2.4 *Assisting spouse deduction and marital quotient*

A new rule has been introduced in order to determine the nature of the transferred income : the original qualifications subsist and the assisting spouse deduction or marital quotient are proportionate to the different categories of income. Thus, in the case of a household where only one of the spouses enjoys professional income, the income transferred in application of the marital quotient is deemed to be a salary when the transferring spouse enjoys labour income and it is deemed to be a pension if the attributing spouse enjoys income from a pension. As is the case in respect of all other provisions aiming at the generalization of the separate taxation, it will enter into force in 2004 (tax year 2005).

## 3. Expenses entitling to a tax relief

### 3.1 *Expenses borne with a view to energy-saving*

The tax reform creates a new category of expenses entitling to a tax relief : are concerned expenses borne in order to execute work aimed at energy-saving. The deduction can be granted for all the dwellings owned by the taxpayer.

The expenses taken into consideration as professional expenses or benefiting an investment allowance are not eligible. The work must have been carried out by a registered contractor.

The ceiling for the eligible expenses is set at € 590 per dwelling. The relief is granted in the form of a tax reduction, the rate of which depends on the type of expense borne.

*Table A.2*  
*Tax reduction for work aimed at energy-saving*

Type of expense	Rate of tax reduction
Replacement of old heating boilers	15%
Solar water heating	15%
Installation of photovoltaic solar array	40%
Installation of double-glazed window units	40%
Roof insulation	40%
Thermostatic valves	40%

This measure enters into force in respect of 2004 income (tax year 2005).

### **3.2 Allocation of deductions and computation of total net income**

The generalized implementation of the separate taxation brings with it the following modifications as from 2004 (tax year 2005).

- There is now a total net income per taxpayer.
- Deductions that are « not individual-linked » <sup>(35)</sup> are portioned in function of the total net income of each spouse.
- The € 294,950 ceiling with respect to donations applies to each spouse.

### **4. Computation of the tax**

The generalization of the separate taxation also affects the general principles of the computation of the tax. After the reform (i.e. in 2004, tax year 2005) they will be as follows :

- application of the scale to the income of each spouse ;
- deduction of the tax exempt slice, which may be increased, where necessary, in the case of disablement or of transfers between spouses ;
- the other tax exempt quotas are deducted preferentially from the income of the spouse who has the highest income, the remainder, if any, being deducted from the income of the other spouse ;
- the « special average rate » of the tax reductions is computed for each spouse ;
- the tax relief for replacement incomes is in principle computed per spouse ; when only one of the spouses is granted such a relief, it is portioned between the spouses proportionately to their part in the total replacement income (pensions, « new » early retirement payments) ;
- tax reductions for foreign income are calculated per spouse;
- advance payments in excess are automatically transferred to the assisting spouse when the tax increase is computed;
- the tax credit for « own assets » applies to each of the spouses.

#### **4.1 Progressive rate**

This measure enters into force according to the scheme detailed in Table A.3. The amounts mentioned are the « indexed amounts » applicable in 2002, whatever the year of the entry into force.

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<sup>35</sup> Namely the additional deduction in respect of mortgage interests, expenses for child care, gifts, maintenance allowances paid by both spouses, the deduction for payments of domestic servants and expenses relating to the maintenance and restoration of classified monuments.

**Table A.3**  
**Modifications of the tax rates (in €)**

Income year Tax year	2002 2003	2003 2004	2004 2005
25%	0 to 6,730	0 to 6,730	0 to 6,730
30%	6,730 to 8,930	6,730 to 9,580	6,730 to 9,580
40%	8,930 to 12,720	9,580 to 12,720	9,580 to 15,960
45%	12,720 to 29,250	12,720 to 29,250	15,960 to 29,250
50%	29,250 to 43,870	> 29,250	> 29,250
52%	> 43,870	Abolished	Abolished

#### **4.2 Tax exempt quotas**

The basic tax exempt quota applying to spouses is put in line with the exempt quota of single persons, in two steps :

- in respect of the 2003 income (tax year 2004), the basic (non indexed) amount goes up from € 3,250 to € 3,390 (or € 4,540 indexed amount for 2002).
- in respect of the 2004 income (tax year 2005), the basic (non indexed) amount goes up from € 3,390, to € 4,095 (or € 5,080 indexed amount for 2002).

A few minor modifications have been introduced as regards the structure of the tax-exempt quotas (tax year 2005) :

- where the taxpayer or his/her spouse is a disabled person, the € 1,160 increase is added to the basic tax exempt amount ;
- the tax exempt amounts are subdivided in three categories : basic amount (disablement included), additional exemptions for dependent persons (disablement included), special family situations ;
- the deduction of the basic amount applies for each spouse, with possibly a transfer to the income of the other spouse, and the tax exemptions for dependent persons are by priority allocated to the income of the spouse with the higher income, the remainder –if any- being allocated to the income of the other spouse : transfer between spouses takes precedence over possible reimbursement.

The following modifications come into force as of 2002 :

- Where tax exemptions for dependent children can not be allocated because of insufficient income, they give rise to a repayable tax credit. This includes the double counting of disabled children and the additional exemption for children who are less than three years old and for whom the deduction for child care expenses has not been requested. The repayable tax credit is calculated at the marginal rate and is limited to € 330 per dependent child.
- For dependent children in single parent families, the maximum amount of own resources is raised from € 3,010 to € 3,480.
- The € 1,160 tax exemption for surviving spouses or single parents with dependent child(ren) is extended to all single persons with dependent children.

### 4.3 Tax reductions on replacement incomes

Individualization of tax reductions means that the reductions are granted to each spouse and that they are limited in function of the income of each spouse. Individualization does not apply to all replacement incomes though. Moreover, a new tax system has been introduced with respect to early retirement pensions. The new provisions enter into force as of income year 2004 (tax year 2005).

*Table A.4*  
*Individualization of tax reductions for replacement incomes*

Type of replacement income	Reduction per spouse/household	Basic amount		Degressiveness
		Single	Spouse	
pensions and others	Spouse	1,590	1,590	reduced to 1/3
early retir.pens. < 1987	Spouse	2,870	2,870	reduced to 1/3
early retir.pens. > 2003	Household	1,590	1,850	reduced to 1/3
unemployment benefits	Household	1,590	1,850	reduced to nil
58+ unempl. benefits	Household	1,590	1,850	reduced to 1/3
sickness & invalidity benefits (legal)	Spouse	2,040	2,040	reduced to 1/3

The « horizontal » limitation is applied by the following proportion :

$$\frac{\text{net amount of the incomes entitling to the reduction}}{\text{net income before application of the marital quotient and before allocation of the other spouses' losses}}$$

This operation applies in principle for each spouse. When there is only one reduction per household, the net incomes are added.

The « vertical » limitation applies per spouse, too.

### 4.4 Tax credit

#### A. Basis

The computation of the tax credit is based on the net amount of activity income ; this means the net amount (i.e. excluding professional expenses, whether real or flat) of professional income (insofar as it is not a replacement income) and of income subject to separate taxation.

The basis is computed before application of the assistant spouse deduction and of the marital quotient.

Are not taken into consideration :

- income from a part-time job if the working time is less than one third of the normal working time.
- income from an independent activity performed by way of secondary activity.

Taxpayers subject - partially or entirely - to flat-rate taxation can not benefit the tax credit.

The basis is calculated **per spouse** and the tax credit is granted per spouse.

**B.** Tax rates

The tax credit is calculated in function of the income (R) and of the lower (L<sub>1</sub>) and upper (L<sub>2</sub>) limits of the brackets in the scale.

*Table A.5*  
*Scale of tax credit*

Not indexed		After indexation (2002)		Amount of tax credit (€)
Brackets of net income (€)		Brackets of net income (€)		
0	3,260	0	3,850	0
3,260	4,350	3,850	5,130	$440 \times (R - L_1)/(L_2 - L_1)$
4,350	10,880	5,130	12,840	440
10,880	14,140	12,840	16,680	$440 \times (L_2 - R)/(L_2 - L_1)$
14,140	and more	16,680	and more	0

**C.** Limitation mechanism

The tax credit is reduced proportionately to the part of the activity income in the global net professional income.

**D.** Allowance

The tax credit is fully deductible, whatever the amount of the tax due on income from professional activities and it is reimbursed if the remainder exceeds € 2.50.

**E.** Phasing

The tax credit is introduced progressively according to the following scheme :

- in respect of 2002 income, tax year 2003 : basic amount = € 78
- in respect of 2003 income, tax year 2004 : basic amount = € 220
- in respect of 2004 income, tax year 2005 : basic amount = € 440.

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## CHAPTER TWO CORPORATE TAXATION (CIT)

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### *What is new ?*

- *The new tax regime applicable to employee equity participation and employee participation in profits and enterprise results is described in the annex to this chapter.*
- *Transparency-roundings in € apply as from 2001 on.*

### 2.1. Tax period

In respect of the taxation of individuals, the tax period is always the calendar year. This is not the case for corporate income tax: the tax period is the **financial year** and the link between the taxable period and the tax year is based on the date the accounts are closed. Legislation relating to tax period 2002 therefore applies **to profits from financial years closed between 31.12.2001 and 30.12.2002.**

### 2.2. Liability to corporate income tax

All companies, associations, institutions or establishments are liable to corporate income tax if :

- they possess legal personality,
- they have their statutory seat, their principal establishment, their seat of management or their seat of administration in Belgium,
- they are engaged in a business or a profit-making activity.

Nonetheless, the law explicitly points out a number of exceptions, the most important of which apply to inter-municipal associations.

Non-profit organizations are, in principle, not liable to corporate income tax, provided their activity is in keeping with their legal status; the status of non-profit company does not automatically bind the tax office, which **can submit a non profit-making company to the payment of corporate income tax if the association is engaged in profit-making activities.**

The law specifies, however, that the following **are not considered profit-making activities** :

- isolated or exceptional transactions,
- transactions relating to the **investment of funds** collected by the non profit-making association in the course of its statutory mission,
- transactions which **only incidentally** involve industrial, commercial or agricultural activities or which are not conducted using industrial or commercial **methods**.

### 2.3. Tax base

The tax base described in this section applies to the **common tax regime** of profits. Other, more specific tax regimes, such as the one on co-ordination centres, distribution centres and service centres, are described in part three <sup>(36)</sup>.

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<sup>36</sup> See page 195 and following.

### **2.3.0. Financial profit and taxable profit**

The notions of "taxable profit" and "financial profit" are quite different from each other; although the latter serves as a basis for the computation of the taxable income, it is subject to several adjustments :

- either because certain profits are exempt (see below: tax exempt reserves and dividends),
- because certain expenses which have lowered the financial results are not tax deductible (see below "disallowed expenses"),
- because the tax depreciation does not correspond to the financial depreciation,
- or because assets have been undervalued and liabilities overvalued.

In addition to these differences, we may add those relating to specific tax deductions.

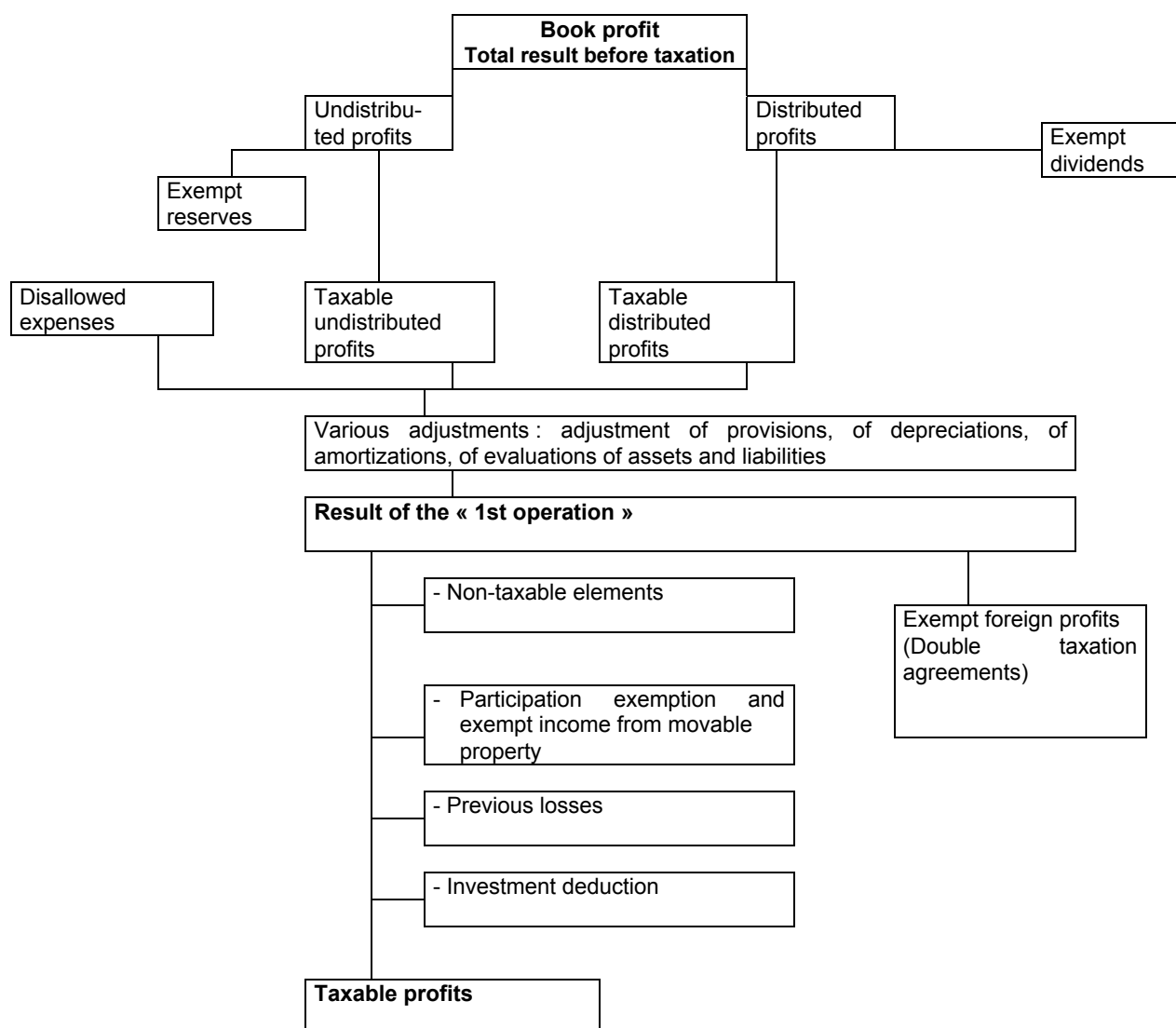
The adjustments and deductions allowing the calculation of the net taxable profit on the basis of the financial profit are usually grouped into "six operations", as follows :

- the addition of the three elements making up the taxable profit: reserves, disallowed expenses and distributed profits (see 2.3.1.);
- the breakdown of profits according to their origin (Belgian or foreign) (see 2.3.2.);
- the deduction of non-taxable items (see 2.3.3.);
- the deduction for PE (Participation Exemption) and for exempted income from movable property (see 2.3.4.);
- the deduction of carry-forward losses (see 2.3.5.);
- the investment deduction (see 2.3.6.).

The taxable profit thus calculated is taxed globally.



**Diagram of CIT**  
**Assessment of tax base**



### 2.3.1. "First operation" : the components of taxable profit

#### A. Retained earnings

As a general rule, any net increase in company assets is considered a taxable profit. Slush funds are to be added to disclosed reserves (accounting reserves); exempt reserves are then singled out in order to ascertain the amount of the taxable reserves.

### DISCLOSED RESERVES

In principle, any retained earnings contribute to the accruing of taxable profits, whatever name they are given : legal reserves, available reserves, unavailable reserves, statutory reserves, provisions for risks and expenses, reserves carried over, etc.

### UNDISCLOSED RESERVES

Undervaluation of assets and overvaluation of liabilities constitute hidden reserves which are also part of the taxable profit.

Depreciations exceeding the depreciation limits allowed by the tax code and underestimations of inventory constitute *underestimations of assets*.

A notional debt is a case of *overvaluation of liabilities*.

### EXEMPT RESERVES

The *exempt portion of capital gains* <sup>(37)</sup> is considered an exempt reserve: if the intangibility condition is required, the exemption is only awarded where the capital gains appear in a separate account.

Certain *provisions* can also be exempted: they must relate to specifically defined *risks and expenses*. The expenses they are to meet must, by their very nature, be professional expenses for the year in which they are to be borne and the formation of these provisions must be justified :

- either by events having occurred in the course of the financial year;
- or by a periodicity of expenses lasting beyond the year but not exceeding 10 years (provisions for overhaul or important repairs).

*The depreciation of debt-claims* is deductible in total as professional expenses when the loss is certain and conclusive.

In the case of a depreciation relating to a probable loss, the debt-claim must result from the professional activity and be identified and justified case by case.

*Share premiums and capital subscription reserves* are exempted if they are incorporated in the capital or appear in an unavailable reserve account and so satisfy the same unavailability condition as the company assets.

### B. Disallowed expenses (DE)

This grouping comprises expenditures which appear as charges in the corporate books but for which no deduction is granted in the calculation of taxable profits, as well as withdrawals of exemptions previously granted.

Are mainly concerned :

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<sup>37</sup> See pages 77 and following.

- non deductible taxes,
- fines, penalties and confiscations of any kind,
- certain interests on loans,
- abnormal or benevolent advantages,
- social benefits in respect of which the beneficiary is exempt from taxation,
- gifts,
- withdrawal of exemption for additional staff,
- certain specific professional expenses,
- write-downs on share participations, except in the case of full distribution of company assets <sup>(38)</sup>,
- certain pensions and pension contributions.
- amounts attributed within the framework of employee equity participation and employee participation in profits and enterprise results <sup>(39)</sup>.

Some of these elements are explained hereafter.

#### DEDUCTIBILITY OF TAXES

Corporate income tax and the related additional crisis tax, advance payments and allowable withholding taxes <sup>(40)</sup> levied or determined on income included in the tax base are not deductible. This is also the case as regards interest on late payments, fines and prosecution expenses related thereto.

On the other hand, the tax levied on secret commissions is deductible.

Withholding tax on real property due by companies for real property they own is also a deductible expense.

#### DEDUCTIBILITY OF INTERESTS ON LOANS

There are four cases where interests on loans are not deductible :

- interests attributed to associates or directors in respect of advances granted to the company : these advances can be considered as dividends, according to the conditions explained hereafter in the section related to taxable dividends <sup>(41)</sup>,
- interests considered « exaggerated »,
- application of the undercapitalization rule,
- the consequence of the failure to comply with the permanency condition in the matter of PE.

Interests are considered « **exaggerated** » to the extent that they exceed an amount corresponding to the market rate of interest adjusted on the basis of particular elements such as the risk involved in the operation, the debtor's financial situation and the term of the loan <sup>(42)</sup>.

<sup>38</sup> Where the reduction in value results from the full distribution of the assets of the company having issued the shares, the deductibility is maintained up to the share capital actually paid up represented by the shares in that company.

<sup>39</sup> This regime is described in the annex to this chapter.

<sup>40</sup> FTTC is assimilated to a withholding tax and is therefore included in the tax base as a disallowed expense. Only the chargeable amount is included in the DE and it may be limited pro rata temporis (see page 69).

<sup>41</sup> See infra, page 62.

This eligibility for non-deduction only applies to interests on bonds, loans, debt-claims and other certificates representing amounts borrowed. It applies neither to interest on loans issued by a public call for funds nor to sums paid by or to financial institutions.

**The rule of undercapitalization** adds to the two previous rules. It only applies to interests which have not been assimilated to dividends and which have not been considered « exaggerated ». These interests are considered non-deductible where the beneficiary is not liable to a common tax regime or benefits a tax regime which derogates from the common tax regime.

These interests are considered disallowed expenses to the extent that the balance of the interest-yielding loans exceeds seven times the sum of the taxed reserves existing at the beginning of the assessment period and the paid-up share capital existing at the end of the taxable period.

This rule does not apply to interests on loans issued by a public call for funds.

The deduction of interest on loans is rejected **up to the amount of the deduction for participation exemption** granted in respect of shares that the company has not yet held for an uninterrupted period of one year at the time of their disposal <sup>(43)</sup>. Indeed, **the permanency condition is then deemed not to have been met.**

### **BENEVOLENT OR ABNORMAL ADVANTAGES**

Are concerned here advantages granted to companies established abroad with which the company has direct or indirect ties involving interdependence, or to companies which are subject, in their country of residence, to a tax regime which is considerably more advantageous.

### **GIFTS**

All gifts are considered unallowed expenses. However, some of them can be deducted from the taxable profits where they fulfil the conditions for exemption specified in article 104, 3° to 5° and 107 of the 1992 Income Tax Code. In such cases, the deduction is made at the « third operation ».

### **WITHDRAWAL OF THE EXEMPTION FOR ADDITIONAL STAFF**

Taking on additional staff can entitle to a tax exemption at the « third operation ». This exoneration is withdrawn however when the staff in question is subsequently reduced.

### **NON-DEDUCTIBILITY OF SPECIFIC PROFESSIONAL EXPENSES**

Are especially concerned here :

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<sup>42</sup> The burden of proof lies with the taxpayer.

<sup>43</sup> This rule does not apply to shares of related companies or of companies carrying on a limited partnership, even where the shares have the nature of investments, nor does it apply to shares recorded on the fixed financial assets side.

- expenses and charges exceeding professional needs to an unreasonable extent,
- 25% of private car expenses (<sup>44</sup>),
- expenses in respect of clothing with the exception of specific working clothes,
- 50% of restaurant bills, reception expenses and business gifts.

#### TAX REGIME OF PENSIONS AND PENSION CONTRIBUTIONS

Payments with a view to constituting an extra-statutory pension are deductible only to the extent that they relate to compensations paid with a regularity similar to that with which compensations chargeable to the results of the taxable period are paid to the personnel. Payments relating to compensations granted by the general meeting of shareholders, or placed on a current account, are therefore not deductible.

The payments must be made, outside any statutory obligation, to an insurance company or pension fund established in Belgium and must be irredeemable.

However, the deduction of these contributions is granted only to the extent that the statutory and extra-statutory allowances converted into an annuity upon the beneficiary's retirement (<sup>45</sup>), added to the other amounts the retirement entitles to, do not exceed 80% of the latest ordinary gross remuneration of a normal career (as a rule 40 years).

#### EMPLOYEE EQUITY PARTICIPATION AND EMPLOYEE PARTICIPATION IN PROFITS AND ENTERPRISE RESULTS

The amounts attributed by the company are considered disallowed expenses. The annex to this chapter provides for a description of the calculation of the taxable amounts.

No gifts, participation exemptions, investment allowances or previous losses can be deducted from the amount thus considered a disallowed expense.

### C.     Distributed profits

#### DIVIDENDS

Dividends distributed by share companies are included in the taxable base.

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<sup>44</sup> Fuel expenses remain fully deductible.

<sup>45</sup> To the exclusion of allowances in respect of individual life insurance contracts.

### INTEREST ASSIMILATED WITH DIVIDENDS

Any interest on advances and loans granted to companies can be assimilated with dividends when the advance or loan is given :

- by a natural person retaining parts in the company;
- by persons holding a managing function in the company, as well as by their spouses and under-age children.

The interest received is then assimilated to a dividend if and to the extent that :

- the interest allocated exceeds the limit set in Article 55 of the 1992 Income Tax Code taking into account the market rate of interest <sup>(46)</sup>;
- the total amount of interest-yielding advances exceeds the total amount represented, at the beginning of the tax period, by the paid-up capital at the end of the tax period increased with the taxed reserves at the beginning of the tax period.

This assimilation to dividends and income from invested capital implies that the amounts in question are not deductible in respect of corporate income tax and are subject to the withholding tax at the rate applicable to dividends <sup>(47)</sup>.

### EXEMPTIONS

Dividends distributed by companies set up within reconversion zones are not taxable.

### ACQUISITION OF OWN SHARES, TOTAL OR PARTIAL DISTRIBUTION OF COMPANY ASSETS

Distributed profits also include payments made upon the acquisition of own shares <sup>(48)</sup> and upon a total or partial distribution of company assets <sup>(49)</sup>.

In the event of a **distribution of company assets**, the sums shared out are considered as distributed profit in respect of the quota exceeding the outstanding company assets effectively paid up, after re-evaluation, if any.

Although these sums are considered as distributed profits, no withholding tax on income from movable property is deducted when they are assigned.

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<sup>46</sup> See above “disallowed expenses”.

<sup>47</sup> This provision does not apply to interest allocated by the Co-operative societies recognized by the National Co-operation Council, nor to interest from bonds issued through a public call for funds.

<sup>48</sup> The conditions and rules of application in the event of an acquisition of own shares are described in Art. 186 of the 1992 Income Tax Code.

<sup>49</sup> The provisions relating to the distribution of company assets are also applicable when the registered office or the principal seat of business is transferred abroad.

### 2.3.2. "Second operation": breakdown of profits according to their source

Taxable profits made up of the sum of reserves, disallowed expenses and dividends are subsequently broken down into three categories according to their origin. If they are earned :

- *in Belgium*, they are taxable at the *full rate*;
- *abroad*, in a country with which Belgium has *not concluded a double taxation agreement*; they receive a *tax reduction* when the CIT is calculated <sup>(50)</sup>;
- *abroad*, in a country with which Belgium has *concluded such an agreement*; they are *exempt* from CIT and are no longer taken into account in the calculation of the taxable base.

### 2.3.3. Tax reliefs at the "third operation"

The following are deductible :

- the € 11,510 (464,312 BEF) (or € 23,030 (929,028 BEF), dependent upon the case) exemption awarded for each additional member of personnel either involved in the field of scientific research, or recruited in order to perform a managing function in the export department or in the « total quality » department in Belgium <sup>(51)</sup>;
- the € 4,280 (172,655 BEF) exemption for each additional member of personnel in SME's <sup>(52)</sup>;
- gifts; the deduction of gifts can, however, neither exceed 5% of the result of the « 1<sup>st</sup> operation », nor € 500,000 (20,169,950 BEF).

No deduction of gifts can apply to the amounts of employee equity participation or employee participation in profits and enterprise results.

### 2.3.4. The "fourth operation": participation exemption (PE) and exempt income from movable assets

#### A. Participation exemption

Participation exemption can be granted for :

- (a) dividends ;
- (b) sums obtained through the distribution of company assets or the repurchase by a company of its own shares, provided the provisions of articles 186, 187 or 209 of the 1992 Income Tax Code or similar provisions in foreign law have been applied.

<sup>50</sup> See section 2.4.4 hereafter.

<sup>51</sup> See chapter 3, page 79.

<sup>52</sup> See chapter 3, page 79.

### B. Exclusions

The taxation requirements introduced by the laws of December 1989 and October 1991, have been replaced since 1997 by a series of exclusions, the nature of which is essentially qualitative.

- 1° The first case of exclusion concerns income allocated or assigned by companies which are not liable to CIT or to a similar foreign tax, or which are established in countries offering a legally established tax system which is markedly more advantageous than the Belgian system.
- 2° The second case of exclusion concerns income allocated or assigned by financing companies <sup>(53)</sup>, money market funds <sup>(54)</sup> or investment companies <sup>(55)</sup> which, although they are liable in their country to a tax similar to CIT, are subject to a tax regime which derogates from the common tax regime.
- 3° The third case of exclusion allows upstream control : the participation exemption is not granted to income other than dividends, obtained by the distributing company itself from companies established abroad, inasmuch as that income has benefited a tax regime derogating from the common tax regime.
- 4° The fourth case of exclusion also allows upstream control of the distributing company : the participation exemption is not granted insofar as the distributing company has obtained capital gains through one or more companies established abroad and benefiting a tax regime which is markedly more advantageous than the one the capital gains would have been subject to in Belgium <sup>(56)</sup>.
- 5° The last case of exclusion concerns income obtained by companies, other than investment companies, distributing dividends to which the first four exclusions apply.

However, the new law provides for limitations of the 5 cases of exclusion :

- 1° Case 1 does not apply to dividends attributed or paid by inter-municipal associations.
- 2° Case 2 does not apply to investment companies whose statutes provide for an annual distribution of at least 90% of the income obtained or capital gains realized.

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<sup>53</sup> A financing company is any one company whose activities consist exclusively or mainly in performing financial services for companies which, neither directly nor indirectly, form a group with the services providing company.

<sup>54</sup> A money market fund is any company whose activities exclusively or mainly consist in investing cash funds.

<sup>55</sup> An investment company is any one company whose activities exclusively consist in investing mutual funds.

<sup>56</sup> Will not be considered to have benefited a "markedly more advantageous regime", capital gains taxed at a rate of not less than 15% in countries with which Belgium has concluded a double taxation agreement.



- 3° Neither case 2 nor case 5 apply to finance companies having established their residence in one of the member states of the EU, as regards legal business or profit-making activities and insofar as the company is not overcapitalized.
- 4° Case 5 does not apply where the distributing company is noted on a European stock exchange and is liable to CIT in a country with which Belgium has concluded a double taxation agreement.

C. Participation threshold

Another requirement is that, at the time of the attribution or payment of the dividends, the shareholding company holds a participation in the capital of the issuing company amounting either to not less than 5% of the latter's capital or to not less than € 1,200,000 (48,407,880 BEF).

This participation threshold does not apply to credit institutions, insurance companies or stock exchange companies, nor does it apply to income allocated or assigned by investment companies and to income allocated by inter-municipal associations.

D. The permanency condition and deduction of interest

The minimum holding period has been re-established indirectly : where a company requests a dividend received deduction in respect of PE without having held those shares for an uninterrupted period of one year on the date of attribution or payment of the dividends, interest charges are to be included in the disallowed expenses up to the amount deducted as PE.

E. Deductible amount

The deductible amount is set at 95% of the income, before deduction of the withholding tax.

The deduction is applied to the amount of the proceeds remaining after the third operation, whereupon it is understood that the following disallowed expenses are to be taken out, which means they are to be considered deductible :

- non-deductible gifts;
- fines and penalties;
- certain specific professional expenses;
- exaggerated interests;
- abnormal or benevolent advantages;
- social benefits;
- contributions to pension schemes.

No deduction can apply to the amounts of employee equity participation or employee participation in profits and enterprise results, considered disallowed expenses.

F. Exempt income from movable property

Income from preference shares in the Belgian National Railway Company (SNCB/NMBS) and income from tax exempted bonds (issued prior to 1962) are also deductible.

**2.3.5. The "fifth operation": deduction of previous losses**

No deduction can apply to the amounts of employee equity participation or employee participation in profits and enterprise results, considered disallowed expenses.

Losses from previous tax periods are deductible without any time limitation.

A special disposition applies, however, where a company gets the contribution of a branch of trade of another company, or of the universality of its goods or when it absorbs another company<sup>(57)</sup>.

**2.3.6. "Sixth operation": the investment allowance**

The arrangements for investment allowances are detailed hereafter in chapter three. The allowance is in force :

- for « R-D » investments, « energy saving » investments, « green » investments and for patents ;
- for small and medium-sized companies, defined here as companies in which the majority of voting rights is in the hands of natural persons and which are not members of a group which owns a Co-ordination centre ;
- for investments aimed at the production of reusable packages and the recycling thereof.
- in the "staggered deduction" form.

No deduction can apply to the amounts of employee equity participation or employee participation in profits and enterprise results, considered disallowed expenses.

The applicable rates and the conditions under which reductions are granted, are detailed in chapter 3.

**2.4. Computation of the tax**

**2.4.1. Common rate**

CIT is payable at a rate of 39%.

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<sup>57</sup> See Art. 206 of the 1992 Income Tax Code.

### 2.4.2. Reduced rates

Reduced rates can be applied when the taxable profit does not exceed € 323,750 (13,060,043 BEF).

**Table 2.1.**  
**Reduced rates of CIT**

Taxable net profit		Rate applicable to this bracket
in €	in BEF	
0 - 25,000	0 - 1,008,498	28%
25,000 - 89,500	1,008,498 - 3,610,421	36%
89,500 - 323,750	3,610,421 - 13,060,043	41%
323,750 and more	13,060,043 and more	39%

In order to qualify for these reduced rates, a company must however fulfil a number of additional conditions relating to :

- the activities of the company,
- the shareholding of the company,
- the rate of return on the capital,
- the remuneration of their managers.

#### THE ACTIVITIES OF THE COMPANY

In order to qualify for the reduced rates, the company must, by law, fulfil two conditions in respect of its activity:

- the company must not be part of a group to which belongs a co-ordination centre registered according to the Royal Decree n° 187 of 30.12.1982;
- the group must not hold shares the investment value of which exceeds 50% of either the revalorized paid-up capital, or the paid-up capital increased by the taxable reserve and the accounting capital gains. The investment values taken into consideration are the ones held by the shareholding company the day they close their annual accounts. The shares representing at least 75% of the paid-up capital of the issuing company are not taken into consideration when determining whether the 50% limit is exceeded or not.

#### THE SHAREHOLDING OF THE COMPANY

Entitlement to the reduced rates is not granted to companies of which at least 50% of the shares are held by one or more other companies.

#### THE RETURN ON THE REGISTERED CAPITAL

Entitlement to the reduced rates is also denied where the rate of return on the registered capital effectively paid up which remains to be reimbursed at the beginning of the tax period exceeds 13%.

### THE REMUNERATION OF MANAGERS

In order to qualify for the reduced rates, the company is also obliged to charge, on the results of the taxable period, to one manager at least a remuneration which, if it is less than € 24,500 (988,328 BEF), shall not be less than the company's taxable income.

### CASE OF THE CO-OPERATIVE SOCIETIES RECOGNIZED BY THE NATIONAL CO-OPERATION COUNCIL

A co-operative society approved by the National Co-operation Council can be entitled to the reduced rates even if it does not fulfil the conditions relating to:

- the shareholding of the company,
- the possession of shares in other companies,
- the remuneration of the managers.

The other conditions remain applicable.

#### **2.4.3. Tax credit**

In order to stimulate the increase of the own means of small and medium-size enterprises, a tax credit is granted, as from tax year 1997, to companies subject to CIT at the reduced rate.

This tax credit amounts to 7.5% of the positive difference between :

- the capital **fully paid up in cash** at the end of the assessment period and,
- the highest of the amounts reached by the capital **fully paid up in cash** at the end of any preceding assessment year that has been taken into consideration as **basis of a tax credit**. If no tax credit has been granted, the second term of the difference will be the highest amount the capital fully paid up in cash has come up to during the three previous assessment periods.

The tax credit can't exceed € 19,850 (800,747 BEF).

It is entirely creditable against CIT. Although possible excesses are not refundable, they may be carried forward and set off against profits realized during the next three assessment years.

#### **2.4.4. Foreign source income**

CIT relating to the net foreign source income from countries with which Belgium has **not signed a double taxation agreement is reduced to a quarter**.

#### **2.4.5. Crisis surcharge**

Owing to the introduction of the crisis surcharge, an additional 3% crisis contribution is levied on corporate income tax, for the benefit of the State only.

#### 2.4.6. Tax increase for lack or insufficiency of advance payments

The tax increase for lack or insufficiency of advance payments is, as a rule, calculated in the same way as for the PIT <sup>(58)</sup>, **except that** :

- the dates are calculated from the first day of the financial year and not from the first day of the calendar year;
- the base must not be raised to 106% ;
- the increase is not reduced to 90%.

#### 2.4.7. Crediting of withholding taxes

##### A. Repayable taxes and payments

The following are set off against corporate income tax and repayable :

- advance payments;
- the withholding tax on income from movable assets.

**With respect to dividends**, the crediting of the withholding tax is made conditional upon the requirement that the recipient have the full ownership of the shares at the moment the income is granted or made payable. In addition, a company cannot set off the withholding tax on income from dividends when the attribution or payment of this income results in a write-down or a capital loss on the underlying shares.

Notional withholding taxes related to interests on loans made to co-ordination centres or related to dividends paid out for capital contributions to co-ordination centres are creditable and repayable. The rate of the notional withholding tax was first reduced from 25/75 to 10/90 and then abolished <sup>(59)</sup>, but these modifications only apply to new investments. Investments made before those modifications still entitle to the crediting of the notional withholding tax.

For all other types of income from movable property, the crediting of the withholding tax on income from movable assets and of the FFTC is only awarded, **pro rata temporis**, for the period during which the company has enjoyed **full ownership** of the securities.

##### B. Non-repayable taxes and payments

The withholding tax on real estate income cannot be set off against CIT, but is to be considered an allowable expense.

The **fixed foreign tax credit** (FFTC) can be set off against CIT but is not refundable. It relates to interests and royalties only.

As regards royalties, the FFTC is equal to 15/85 of the net domestic income actually received.

<sup>58</sup> See above page 48 and following.

<sup>59</sup> See Part III « Co-ordination centres », p.199 and following.

As regards interest, it is determined as follows :

- the rate of the FFTC is no longer uniform, but depends on the tax actually levied abroad. This rate is obtained by dividing the tax actually paid abroad by the border income, and is limited to 15%;
- the amount thus obtained can be set off against CIT, but it cannot exceed the amount of CIT relating proportionally to the braking margin, which is the difference between the border income and the relating financial expenses.

The FFTC can be set off only as regards the period in which the company has detained full ownership of the goods or capital.

### **2.4.8. Special tax regimes**

A 300% tax, to be increased by the additional crisis tax, is applied to non justified sums or expenses and to undisclosed reserves.

This contribution constitutes a professional expense.

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## ANNEX TO CHAPTER 2

### EMPLOYEE EQUITY PARTICIPATION AND EMPLOYEE PARTICIPATION IN PROFITS AND ENTERPRISE RESULTS

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The Act of May 22 nd 2001 establishes a new system of taxation which is deemed to promote employee equity participation and employee participation in the profits of their enterprise or of the group their enterprise is part of. The present annex briefly describes the principles of the said system and the new fiscal provisions.

#### *Principles of the new system*

The participation scheme is to respect certain conditions, the most important of which are explained hereafter.

It shall be set up through a collective agreement or, where the enterprise has no union delegation, through an acknowledgment of approval established by the employer and approved by the employees. It shall provide a procedure allowing the collection of the employees' observations or remarks and, where necessary, a conciliation with the employer's proposals.

All the employees shall be allowed to participate in the scheme. The collective agreement or acknowledgment of approval may impose a condition as to the length of service, provided the latter does not exceed one year.

At the end of the accounting year, the total amount of the equity participation and participation in profits granted to the workers shall exceed neither of the two following limits : 10% of the gross total emoluments or 20% of the profit after taxation.

The participation scheme shall not be established in order to substitute or convert emoluments, bonuses, benefits or supplements stipulated in the collective or individual agreements.

The profit sharing scheme established by a « small company » such as defined in the Corporation Code, may take the form of an investment savings scheme, by virtue of which the benefits attributed to the employees by the company are put at the disposal of the company as a non-subordinated loan. The amounts lent bear interest, the rate of which can not be inferior to the interest borne by linear bonds having the same duration as the loan granted to the company. The loan shall be paid back within a period that shall not be less than two years nor exceed five years. The company is obliged to assign the received amounts to fixed assets during the same period.

In principle, no employers' contributions or employees' contributions are chargeable in respect of the sums allocated by the company in the framework of the participation scheme.

#### *Taxation system*

The sums allocated by the company in the framework of the participation are **subject to corporation tax as disallowed expenses**. So they are considered to be neither a professional income nor a movable capital income. Half of the taxes thus collected are transferred to the National Office of Social Security. Where the allocated benefit is a disallowed expense, no deduction of gifts, of participation exemption, of investment allowance or of previous losses is allowed in respect of the allocated amount.

#### *Equity participation*

- As regards equity participations, the taxable amount is determined in function of the stock market price where quoted shares are concerned and, where non-quoted

shares are concerned, the determined amount can neither be lower than the book value of the shares nor lower than its actual value, the latter being fixed by a company auditor or by a chartered accountant.

- The equity participation is subject to a **15% levy in full discharge** <sup>(60)</sup> insofar as the participation plan provides for a non-redemption period that can neither be inferior to 2 years nor longer than 5 years. Where the non-redemption period is not respected, a supplementary 23.29% tax is charged <sup>(61)</sup>.

### Participation in the profits

- The allocated amount constitutes the taxable amount.
- The allocated amounts are subject to employees' social contributions and the remainder is subject to a 25% levy in full discharge.

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<sup>60</sup> This levy is a tax assimilated to income taxes. See 2nd Part, chapter 11.

<sup>61</sup> The rate of this tax was set in such a way that the tax levied would correspond to the global levy, including social security contributions, that would be payable in the case of an allocations in cash.



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## CHAPTER THREE PROVISIONS COMMON TO PIT AND CIT

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### *What is new ?*

- ***As from 2001 the annual indexation and transparency roundings in € apply to all the provisions common to PIT and CIT.***

### 3.1. Tax regime of depreciation

The Income Tax Code authorizes two depreciation methods <sup>(62)</sup> : the straight-line method (linear depreciation) and the declining balance method (degressive depreciation)

**Straight-line depreciation** is calculated by applying, each year of the depreciation period, a constant depreciation rate to the acquisition or investment value.

**Declining balance depreciation** is calculated annually on the **residual** value of the property and its maximum amount is equal to twice the linear depreciation corresponding to the useful economic life. The taxpayer must apply a depreciation equal to the linear depreciation annuity starting from the tax period in which this annuity exceeds the degressive depreciation annuity. A degressive depreciation annuity can, in no case, exceed 40% of the acquisition or investment cost.

Degressive depreciation **cannot be applied to:**

- intangible fixed assets,
- motor vehicles, with the exception of taxis and vehicles used for self-drive hire,
- fixed assets the use of which has been granted to a third party by the taxpayer who writes them off.

The taxpayer opting for the degressive depreciation must mention the related assets in an appropriate list.

The depreciation of **additional costs** is authorized, provided these costs relate to assets for which depreciation of the principal is acceptable to the tax administration.

Two different depreciation systems are accepted:

- inclusion in the depreciation value of the property with simultaneous depreciation;
- separate depreciation according to a specific scheme <sup>(63)</sup>, or a 100% depreciation in the course of the tax year or the financial year in which the investment was made.

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<sup>62</sup> In some cases, the linear depreciation can be doubled : see page 77.

<sup>63</sup> For motor vehicles, the additional costs must be written off at the same rate as the vehicle itself.

Software suffering an unusual loss of value owing to the changeover to euro and software developed specifically in order to carry out the changeover are allowed additional or exceptional depreciations instead of linear fixed depreciation.

### 3.2. Investment allowance

The investment allowance <sup>(64)</sup> permits the deduction, from the tax base, of a quota of the amount of investments made in the course of the tax period.

It can be awarded to individuals declaring profits or proceeds and to companies.

#### 3.2.1. Investments taken into account

##### General rule

The investment allowance may apply to investments in **tangible** or **intangible** fixed assets, **newly** acquired or constituted during the tax period and which are assigned **in Belgium** for the exercise of a professional activity.

##### INVESTMENTS TRANSFERRED TO THIRD PARTIES

When the investment concerns assets the use of which has been transferred to a third party, the latter being entitled to write them off, then the lessor will not be granted an investment allowance : this is the case as concerns leasing contracts and agreements for long lease rights or building rights.

When the investment concerns assets the use of which has been transferred according to other means than leasing contracts and agreements for long lease rights or building rights, the lessor being entitled to write them off, then the transferee will only be granted an investment allowance if he is a natural person who uses the assets in Belgium in order to obtain profits or benefits and who does not yield, be it partially, the use of the assets to another third party.

##### OTHER CASES OF EXCLUSION

The following are excluded from the investment allowance :

- fixed assets which are not exclusively assigned for the exercise of a professional activity,
- investments financed through a co-ordination centre,
- buildings acquired with a view to resale,
- assets which cannot be depreciated or which can be depreciated in less than three years,
- accessory expenses, when they are not written off together with the fixed assets to which they relate,
- cars and twin-purpose cars <sup>(65)</sup>.

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<sup>64</sup> Articles 68 to 77 of the Income Tax Code.

<sup>65</sup> Except for vehicles assigned exclusively to taxi services, to rent with driver and to practical training in recognized driving-schools.

### **3.2.2. Calculation base**

It is the amount that can be depreciated which determines the basis for calculation of the investment allowance.

### **3.2.3. Applicable rates**

#### **DETERMINATION OF THE BASIC RATE**

The basic rate is linked to the inflation rate: for investments made in the year « t » it is based on the difference between the average consumer price index for the years « t-1 » and « t-2 », increased by 1 point (companies) or by 1.5 points (natural persons).

For companies the basic rate cannot be less than 3% and not more than 10%.

For natural persons, the limits are set at 3.5% and 10.5%.

#### **INVESTMENTS ENTITLING TO DEDUCTION AT THE BASIC RATE**

Since the investment allowance was de-activated the deduction at the basic rate is restricted to :

- investments by natural persons and by small and medium-sized companies, the latter being defined as those in which the majority of voting rights is held by natural persons and which do not belong to a group to which a co-ordination centre also belongs,
- investments aimed at the production and the recycling of reusable packaging.

#### **INCREASED RATES**

Increased rates are always calculated in relation to the rates applying to natural persons, even where the investments are effected by companies.

These rates only apply :

- to research & development investments and to patents (+10 points),
- to so-called “green” investments, which are defined as being investments aiming at promoting research and development of new products and of high-tech which do not interfere with the environment or aiming at minimising the negative effects on the environment (+10 points),
- investments in energy-saving (+10 points),
- investments by innovation companies.

In the case of staggered deduction (see below), the basic rate is increased

- by 17 points for “green” investments,
- by 7 points for other investments.

**Table 3.1.**  
**Rates of investment allowance**  
**Tax year 2002**

Kind of investor and nature of investment	Rate
Natural persons (allowance in one go)	
Basic rate	4.5%
Patents, « R-D » investments, « green » investments or energy saving investments	14.5%
Companies (allowance in one go)	
Small and medium-sized companies	4.0%
Other companies	0.0%
Patents, « R-D » investments, « green » investments, energy saving investments	14.5%
Investments made in order to promote re-utilization of refillable beverage containers and re-usable industrial products	3.0%
Staggered deduction	
« green » investments	21.5%
Other investments	11.5%
Innovation companies	
Basic rate for small and medium-sized innovation companies	9.0%
Basic rate for other innovation companies	5.0%
Patents, « R-D » investments, « green » investments, energy saving investments	19.5%
Staggered deduction for « green » investments	26.5%
Staggered deduction for other investments	16.5%

### 3.2.4. Arrangements

The deduction is made in principle **in one go**.

Companies employing less than 20 workers as of the first day of the tax period can opt for a system of simplified staggered deduction <sup>(66)</sup>.

In this case, the allowance is made in accordance with the accepted fiscal depreciation.

In the event of insufficient profits (or proceeds), the investment allowances which cannot be awarded are carried over to the following tax periods.

The investment allowances to which the taxpayer is entitled by virtue of investments in previous tax periods, are deductible within the following limits:

**Table 3.2**  
**Limitation of carry-over of investment allowance**

Net result	Limit of deductibility of carry-over
less than € 713,810 (28,795,024 BEF)	None
between € 713,810 and € 2,855,220 (between 28,795,024 and 115,179,289 BEF)	€ 713,810 (28,795,024 BEF) maximum
€ 2,855,220 (115,179,289 BEF) and more	25% of carry-over

<sup>66</sup> The condition with regard to the number of workers need not be met in order to be entitled to the staggered deduction for green investments.

### 3.3. Fiscal impact of regional aid

#### 3.3.1. *Inclusion of aid in the taxable base*

**Employment subsidies** constitute a taxable income for the beneficiary companies.

Regional investment aid generally consists of either interest subsidies or capital subsidies.

**Interest subsidies** are always taxable, as they reduce the amount of interest paid, and are therefore deductible.

**Capital subsidies** are not taxable at their collection but are considered as profits for this tax period and for subsequent tax periods proportionate to the depreciation which have been approved as professional expenses respectively till the end of this tax period and in the course of any subsequent period and, where appropriate, for the amount remaining when the fixed assets are transferred or put out of circulation.

#### 3.3.2. *Doubling of linear depreciation*

The doubling of linear depreciation <sup>(67)</sup> applies to certain investments in buildings, tools and equipment which enjoy regional aid (or, formerly, the laws of economic expansion).

The authorized annual depreciation is equal to double the normal linear depreciation for a period of maximum 3 successive taxable periods, as agreed in the aid contract.

#### 3.3.3. *Exemption from withholding tax on real estate income*

The exemption from withholding tax on real estate income <sup>(68)</sup> is awarded to real estate investments for which the company enjoys regional aid (interest subsidies or capital subsidies).

This exemption is awarded for a maximum of 5 years dating from January 1st following the occupation; it relates both to the buildings and the land forming part of the same cadastral plot and to the equipment and tools that are immovable by their very nature or by their purpose.

### 3.4. Tax arrangements for capital gains

#### 3.4.1. *Capital gains realized during exploitation*

##### A. *Capital gains intentionally realized on tangible and intangible assets*

The tax regime is based on the principle that taxation can be carried over.

This carry-over of taxation applies to capital gains made on tangible and intangible assets allocated for **more than 5 years** to the performance of the professional activity, on condition that there is a re-investment.

If the duration of the allocation is less than 5 years, the capital gains constitute a taxable profit at the full rate.

When the tax can be carried over, the capital gains in question are considered as profits for the taxable period of re-investment and for subsequent taxable periods in proportion to the

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<sup>67</sup> See Art. 64 bis of the 1992 Income Tax Code.

<sup>68</sup> Cf. laws of 17.07.1959 and 30.12.1970.

depreciation and the non-depreciated balance for the tax period during which the property ceases to be allocated to the exercise of the professional activity.

The staggered taxation is made at the full rate.

The re-investment must be made in respect of tangible or intangible assets that can be depreciated. The re-investment must be made within a period of 3 years starting from the first day of the tax period during which the capital gains were acquired.

If there is no re-investment within this period, the capital gains are considered as a profit for the tax period during which the re-investment period expired.

The tax is payable at the full rate.

The exemption of the monetary adjustment portion is maintained <sup>(69)</sup>.

### B. Capital gains intentionally realized on financial fixed assets

Capital gains made on fixed income securities are taxable at the full rate.

From tax year 1992 onwards, capital gains made on stocks and shares are totally exempt, without the re-investment condition or intangibility condition having to be met.

Nonetheless, the revenue produced by the stocks or shares on which the capital gains are made must comply with the "taxation condition" applicable to participation exemption (PE) <sup>(70)</sup>. On the other hand, **the condition relating to the participation threshold is without effect on the exemption of capital gains.**

### C. Unintentional or forced capital gains

Forced capital gains must be construed as capital gains acquired through compensations received as a result of casualties, expropriation, claim to right of ownership or any other similar event; are hence concerned, events which the natural or legal person could neither foresee nor prevent. Where the event results in a permanent cessation of the professional activity, the regime of "capital gains upon the cessation of a professional activity" applies.

In the other case, i.e. where the professional activity is furthered, the capital gains are chargeable according to the rules that apply to voluntary disposition :

- carry-over taxation, where the condition of re-investment in tangible or intangible fixed assets is met;
- full rate taxation for capital gains on fixed income securities;
- exemption without re-investment condition, provided the condition of taxation for capital gains on shares is met.

The re-investment period ends three years after the end of the taxable period in which the compensation is **received**.

### **3.4.2. Capital gains realized upon the cessation of a professional activity**

Capital gains realized upon the cessation of a professional activity are capital gains realized on the occasion or as a result of the discontinuation of a professional activity, whether these gains

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<sup>69</sup> The exemption of the monetary adjustment portion only concerns capital gains made on assets acquired or constituted not later than 1949.

<sup>70</sup> See above, page 63.

are made involuntarily or not. The special regime applies for capital gains on stocks and contracts in progress, on intangible fixed assets, on tangible and financial assets and on other portfolio securities <sup>(71)</sup>.

The discontinuation can be complete or partial, but it must be final.

The capital gains are taxable as from the date they are **settled**, e.g. upon promise to sell, upon a hire-purchase contract, upon the declaration of an inheritance.

Tax regime and rates to apply depend on the circumstances and on the nature of the assets :

- for tangible or financial assets and for other securities : 16.5%
- for intangible fixed assets : for the portion of the discontinuation gains not exceeding the algebraic sum of the taxable net profits and proceeds obtained during the four years preceding the year of discontinuation, the rate of 33% applies; for the balance, the separate taxation does not apply.

The 16.5% rate also applies where the discontinuation is the result of the taxpayer's decease, where it is a forced final cessation and where the taxpayer has reached the age of 60 at the time the cessation of activity is registered.

### 3.5. Exemption for certain categories of additional staff

An exemption (deduction from taxable profit) of € 11,510 (464,312 BEF) is awarded for each additional member of personnel employed in Belgium and assigned to

- scientific research,
- the development of the company's technological potential,
- the management of the export department <sup>(72)</sup>,
- the management of the "total quality" department.

This is a **permanent** regulation that applies to **all enterprises**.

This amount is raised from € 11,510 (464,312 BEF) to € 23,030 (929,028 BEF) when the newly engaged person is a highly qualified researcher employed in the field of scientific research. The person concerned must either have a Doctorate or be a qualified high school teacher, and he must be able to give proof of at least ten years' experience in the field of scientific research.

The additional personnel is determined according to the average number of workers employed by the company for the same purpose in the course of the previous tax period. The exemption awarded is withdrawn in the event of a personnel reduction.

### 3.6. Exemption for additional SME personnel

Per taxable period and per additional staff member employed in Belgium € 4,280 (172,655 BEF) of the profits and proceeds obtained by an SME are tax exempt.

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<sup>71</sup> The regime described hereafter applies where the discontinuation of a professional activity occurred after April 6th, 1992.

<sup>72</sup> The exemption can also be awarded if the function is conferred upon a member of the existing personnel, provided a new recruitment fills in the vacancy thus opened within thirty days.

## DIRECT TAXATION

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Are considered to be SME's : industrial, commercial or agricultural enterprises employing less than eleven wage or salary earners on December 31st, 1997 or, where the company has commenced its activity after that date, on December 31st of the year the company has started its activity.

The exemption applies to Personal Income Tax, Corporate Income Tax and Non-Resident Income Tax.

The increase in personnel is computed by comparing the average work force in the current year with the work force in the preceding year.

Are not taken into consideration for the exemption :

- additional personnel in respect of whom an exemption for additional personnel employed in the field of scientific research has been granted, as well as the other cases mentioned above sub 3.5,
- additional personnel whose gross salary exceeds € 79.82 (3,220 BEF) per day or € 10.51 (424 BEF) per hour,
- increases in personnel pursuant to the take-over of personnel under contract with either a company in respect of which the taxpayer has any form of interdependence, or a company whose activity the taxpayer is carrying on.

If however, in the course of the year following the exemption, the work force diminishes in comparison with the year of exemption, the total amount of formerly exempted profits or proceeds shall be diminished by € 4,280 (172,655 BEF) per released member of the personnel.

This measure is a **temporary** one; it applies to the 1998-2003 period.



## **CHAPTER FOUR LEGAL ENTITIES INCOME TAX (LEIT)**

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### **4.1. Liability**

Three categories of bodies are liable to taxation on legal entities :

1. the State, the provinces, the Brussels conurbation, the municipalities and public clerical institutions (authorities managing church property);
2. inter-municipal associations, interurban transport companies, as well as certain institutions designated by name: National Delcredere Office (= national export credit insurance office), TEC, De Lijn, etc. ;
3. companies and associations, particularly non profit-making companies which are not involved in profit-making concerns or operations.

### **4.2. Taxable base and levy of the tax**

#### **4.2.1. Basic principle**

Legal entities liable to LEIT are not taxed on their total annual net income, but only :

- on their real estate income,
- on their income from capital and movable property, inclusive the first € 1,440 (58,089 BEF) bracket of income from savings deposits and the first € 150 (6,051 BEF) bracket of dividends from recognized co-operative societies and to societies with a social purpose.
- on certain miscellaneous forms of income,

and the taxes are collected by means of withholding taxes.

#### **4.2.2. Taxation of income from movable property**

Where tax-payers subject to LEIT receive income from movable property or miscellaneous income of movable origin in respect of which no withholding tax on income from movable property was deducted, the withholding tax is due by the recipient of the income.

#### **4.2.3. Six cases of putting items on the tax roll**

However, in six special cases specific items are put on the tax roll : in all these cases the crisis surcharge applies and is subject to the same conditions as in corporate income tax.

- a) Certain types of real estate income, notably net income from land and buildings situated in Belgium and leased, are subject to a tax of 20%. This tax only applies to category 3.

- b) Capital gains made through the disposal for consideration of developed or undeveloped real estate are taxable according to the same arrangements as for PIT. This applies to category 3.
- c) The transfer of important participations is taxable, at the 16.5% rate, according to the same arrangements as for PIT (<sup>73</sup>). This applies to category 3.
- d) Sums or expenses which are not justified are taxable according to the same arrangements as for CIT (rate of 300%). This does not apply to category 1.
- e) Pension contributions and pensions considered disallowed expenses under CIT are liable to a 39% tax. This tax is not due by category 1 (i.e. the State, provinces, etc.).
- f) Inter-municipal associations are taxable on dividends attributed to all other legal entities except inter-municipal associations and public administrations. The rate of this tax is 15% and the increase for lack or insufficiency of advance payments is applicable according to the same arrangements as for corporate income tax.

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<sup>73</sup>

See page 15.

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## CHAPTER FIVE

### WITHHOLDING TAXES AND ADVANCE PAYMENTS

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This chapter deals with the advance payments relating to year 2002 and, mainly, with the withholding taxes. Consequently, all amounts are stated in €. Two of the three withholding taxes have actually become final taxes in most cases. Indeed,

- only the withholding tax on real property pertaining to the taxpayer's private dwelling is still creditable against his/her income tax liability,
- the withholding tax on movable property is a levy in discharge and replaces the final tax, except where taxpayers consider globalization more advantageous to themselves and make a return under PIT.

The only genuine withholding tax is the withholding tax on earned income.

The provisions related **to the withholding tax on earned income**, which are mentioned in this chapter are the ones applicable to **income paid as from October 1st, 2002**.

#### 5.1. Withholding tax on real estate income

The rate of the withholding tax on real estate income is based on the index-linked cadastral income. For income earned in 2002, the index coefficient has been set at 1.3175.

##### A. Basic rate and surcharges

The rate of the withholding tax on real estate income comprises the basic rate and the provincial and municipal surcharges.

The Regions are competent to determine the basic rate and the exemptions in respect of that withholding tax. The applicable rates are the following :

*Table 5. 1*  
*Rates of withholding tax on real estate*

	Flemish Region	Walloon Region	Region of Brussels Capital
Basic rate	2.5	1.25	1.25
Modest dwellings	1.6	0.8	0.8
Equipment + tools	2.29	1.25	1.25

In all cases the provincial and municipal surcharges are to be added. If the basic rate is 1.25%, for instance, then a surcharge of 3,000 centimes will generate an additional rate of 37.5%, the total rate of the withholding tax on real estate thus amounting to 38.75%.

**B. Reductions or rebates**

**REDUCTION FOR A MODEST DWELLING**

A reduction is granted where the non-indexed deemed rental value of the taxpayer's global real estate does not exceed € 745. The standard rate of this reduction, which applies to the withholding tax on the main residence, is 25%. In the Flemish Region the € 745 limit is calculated on the basis of the real estate situated in the Flemish Region.

In the case of the construction of a new house or the acquisition of a newly built house, the reduction amounts to 50% during the first five years in which the withholding tax on that real estate is due. The taxpayer is not granted this higher rate if he has received a subsidy for the construction or the acquisition of that dwelling.

**DISABILITY AND INFIRMITY**

War invalids are granted a 20% reduction, disabled people a 10% reduction<sup>(74)</sup>. In the Flemish Region this 10% reduction does not apply ; a reduction is granted by way of adding one unit to the number of children taken into consideration in table 5.2.

**FAMILY ENCUMBRANCES**

In the Walloon Region and in the Region of Brussels-Capital, a 10% reduction is granted for each dependent child, provided the head of the family who claims the rebate still has at least two children living.

In the Flemish Region, the reduction for family encumbrances is granted according to specific stipulations. The concept of « family encumbrances » has been done away with ; children can only be granted the reduction if they are entitled to child benefit and if they were part of the household on January 1st of the assessment period.

These reductions are not measured in percentages ; they are lump sums granted, from two children onwards, according to the following scale :

***Table 5. 2  
Reduction of the withholding tax on real estate income for family encumbrances – Flemish Region***

Number of children taken into consideration	Total amount of the reduction in €
2	5.58
3	9.32
4	13.04
5	17.10
6	21.45
7	26.13
8	31.13
9	36.43
10	42.08

**REBATE FOR UNPRODUCTIVENESS**

<sup>74</sup> People suffering from a handicap of at least 66% due to one or several complaints. In the Flemish Region, the reduction for disabled people is computed, from tax year 1999 onwards, as if it were for a disabled child.

A rebate, proportional to the period of non-occupation or unproductiveness of the property, can be granted.

- Specific provisions apply to the Flemish Region : the rebate for unproductiveness is not granted where the real property has been unoccupied for more than twelve months during the period covering the current and the previous assessment years. In order to entitle to a proportional rebate, the period of unproductiveness must be of not less than 90 days and not more than 12 months. This limitation does not apply to built real property which is the object of an expropriation project, to real property with a social or cultural end and which are renovated or transformed on behalf of a public body by social housing agencies. It does not apply either where the taxpayer is unable to exercise his rights *in rem* because of a disaster or because of a case of force majeure.
- In the Region of Brussels-Capital, this reduction is only granted on specific conditions <sup>(75)</sup>.

## 5.2. Withholding tax on income from movable property (T.Mov.)

### 5.2.1. On dividends

Dividends are subject to a withholding tax of 25%.

#### INTEREST ON LOANS ASSIMILATED TO DIVIDENDS

Interest on loans granted to their company by company managers (previously directors and active partners) or by natural persons who are shareholders, are assimilated to dividends if and to the extent that

- either the interests result from an interest rate exceeding the normal market rate applicable to the case in point;
- or the total amount of interest-bearing loans exceeds the total represented by the paid up capital at the end of the tax period, increased by the taxed reserves existing at the beginning of the tax period.

Interest is not assimilated to dividends when it relates to:

- bonds issued through a public call for funds;
- advances paid to Co-operative societies recognized by the National Co-operation Council;
- advances paid by managers who are themselves liable to corporate income tax.

<sup>75</sup>

These conditions are set in the Ordonnance of April 13th, 1995 amending the Ordonnance of June 23rd, 1992 concerning withholding taxes on real income (BOJ of June 13th, 1995).

### "NEW" SHARES TO WHICH THE 15% RATE APPLIES

Unless the company paying the income does not irrevocably waive the benefit of that reduction, the 25% tax rate is reduced to 15% for the following dividends :

- a) dividends from shares issued as from January 1st, 1994 pursuant to a public call for funds;
- b) dividends from shares issued, as from January 1st, 1994, pursuant to cash contributions and which, since their issue :
  - have been registered with the issuer;
  - have been placed in an open deposit, in Belgium, with a bank, a stock exchange company or a savings bank subject to the control of the Banking and Finance Commission;
- c) dividends distributed by investment companies;
- d) dividends from AFV(fiscal advantage)-shares noted on a stock exchange, when the company paying the dividends has irrevocably waived the transfer, to the income paid on the relevant shares, of the tax saving or of the additional income, if any, from the said exemption from corporate income tax;
- e) dividends from SME-shares noted on a stock exchange and/or dividends from SME's of which a part of the capital has been entered by a PRICAF (= Private equity closed-end UCIT); SME's shall be construed here as being companies that continue to enjoy the investment allowance.

### "PARENT-SUBSIDIARY" DIVIDENDS

Dividends allocated by a Belgian subsidiary to the parent company are exempt from withholding tax provided the parent company is located in a Member State of the European Community and has maintained, during an uninterrupted period of at least one year, a minimum share of 25% in the capital of the subsidiary.

#### **5.2.2. On interests**

##### **A. General rule**

The rate of withholding tax on movable property is 15%.

With respect to income paid or attributed pursuant to agreements concluded before March 1st, 1990, a 25% rate applies however.

There are several exceptions to this general rule, based either on the very nature of the financial product or on the nature of the investor. The most important of these exceptions are described hereafter. Moreover, a special tax regulation is provided for dematerialized securities.

**B. Special treatment of certain financial products and certain financial operations****SAVINGS DEPOSITS**

The first € 1,470 bracket of a yearly income from ordinary savings deposits is exempt from withholding tax on movable property if the beneficiary is a natural person.

**CAPITALIZATION BONDS**

With respect to financial products with compulsory or elective capitalization, any amount attributed by the issuer, at any moment, in excess of the capital, is a taxable income from movable property.

Furthermore, the collection of withholding taxes on movable property shall on no account be waived. This withholding tax on movable property is due upon the surrender or the repurchase of the shares by the issuer, on the difference between the transaction price and the issue price.

**COLLECTIVE INVESTMENT FUNDS**

No withholding tax on movable property is due on income paid in Belgium by collective investment funds. Indeed, these funds are charged to tax at the collection of the income from investment.

**C. Categories of investors**

- **“financial institutions”** shall be construed as being banks, insurance companies, credit unions, financial enterprises and, more broadly, public and private institutions having a legal personality, the activity of which consists solely in attributing credits and loans,
- **“social institutions”** shall be construed as : health insurance funds and institutions created in the framework of social legislation,
- **“professional investors”** shall be construed as : companies liable to CIT and Belgian institutions of foreign companies liable to NRIT,
- **“private savers”** shall be construed as being all taxpayers who have not used their interest bearing movable property for their professional activity;
- **“non-resident savers”** shall be construed as being taxpayers liable to NRIT/ind. who have not used their movable property in the performance of their professional activity. In order to be eligible, as a non-resident saver, for exemption from withholding tax on movable property, a certificate must be submitted which ascertains that the taxpayer is the owner or usufructuary of the interest bearing capital.

**D. Exemptions in respect of the nature of the investors**

The table hereafter summarizes the most important exemptions (E), some of which are conditional (E\*), per category of investors and per category of income.

Investors are classified according to the above categories, i.e. financial institutions (FI), social institutions (SI), professional investors (PI), private savers (PS) and non-residents (NR).

**Table 5. 3**  
**Exemptions in respect of the nature of the investors (mov.prop.)**

	FI	SI	PI	PS	NR
- public funds, bonds, deposit certificates and similar securities	E	E			(E*)(a)
- income from debentures and loans					
- mortgage loans	E	E	E	E	
- other loans	E	E	E		(E*)(b)
- common savings deposits	E	E		(E*)(c)	(E*)(c)
- other deposits	E	E			(E*)(d)

- (a) The tax exemption is granted with regard to income which has been registered nominally by the issuer.
- (b) The tax exemption is not granted in respect of income from credits and loans embodied by bearer securities.
- (c) For the first € 1,470 slice of interests only (see supra).
- (d) For deposits with financial institutions only.

### 5.3. Withholding tax on earned income <sup>(76)</sup>

This section only relates to withholding taxes on income earned by residents and is confined to the most frequent forms of remuneration, i.e. employees' and director's remunerations.

#### 5.3.1. Employees' remunerations

The tax deducted at source is withheld by the employer and computed in six main steps <sup>(77)</sup> :

- deduction of the social security contributions,
- deduction of the professional expenses,
- application of a tariff aligned with the PIT tariff,
- taking into consideration of the basic exempt portion of the income,
- taking into consideration of the family situation,
- computation of the monthly amount.

##### A. Deduction of social security contributions

From the gross income are subtracted the employee's social security fees and other levies made in pursuance of the social legislation or assimilated legal or administrative regulations. The special social security contribution is not deductible though.

<sup>76</sup> The ways of implementation applicable to the withholding tax on earned income granted or made payable as from October 1st, 2002 are laid down in the Royal Decree of 19.06.2002 (BOJ of 04.07.2002).

<sup>77</sup> The 6% municipal and conurbation tax and a 1% crisis surcharge have been taken into account for the calculation of the withholding tax on earned income mentioned hereafter.



**B. Deduction of flat-rate professional expenses**

The annual income is then transformed into a net annual income by subtracting the **flat-rate professional expenses**.

**Table 5.4**  
*Professional expenses and computation of the withholding tax on earned income*

Gross annual income in €		Professional expenses	
		on lower limit in €	% above lower limit
0	- 4,420.00	0	23%
4,420.00	- 8,790.00	1,016.60	10%
8,790.00	- 14,630.00	1,453.60	5%
14,630.00	- 54,776.67	1,745.60	3%
54,776.67	and more	2,950.00	0%

**C. Scale**

The **common scale** shown in Table 5.5 applies as it is,

- where the beneficiary of the income is single;
- where the beneficiary's spouse has also own earned income consisting exclusively of pensions, annuities or assimilated benefits exceeding a monthly net amount of € 100, « net » amount being construed as the amount after deduction of social security contributions and after deduction of 20% of the remainder.

**Table 5.5**  
*Computation of withholding tax on earned income – Common scale*

Net taxable annual income in €		Basis tax	
		on lower limit	% above lower limit
0	- 6,730	0.00	26.75%
6,730	- 8,920	1,800.28	32.10%
8,920	- 12,720	2,503.27	42.80%
12,720	- 29,260	4,129.67	48.15%
29,260	- 43,870	12,093.68	53.50%
43,870	and more	19,910.03	55.64%

A particular provision applies :

- where the beneficiary's spouse has no earned income of his/her own ;
- where, on 01.10.2002, the beneficiary's spouse has an own earned income consisting exclusively of pensions, annuities or assimilated benefits not exceeding a monthly net amount of € 100, « net » amount being construed as the amount after deduction of social security contributions and after deduction of 20% of the remainder.

The withholding tax on earned income is then computed as follows :

- 30% of the beneficiary's net taxable annual income is attributed to his/her spouse, with a maximum of € 7,900. The amount attributed shall be construed as being « Income B », the remainder being understood to be « Income A » ;
- the common scale is then applied to both Income B and Income A ;
- a reduction of € 2,268 is granted on the global withholding tax thus computed.

D. Taking into consideration of the exempt portion

When the common scale (Table 5.5) applies as it is, the basis tax computed according to that scale shall be reduced by € 1,163.63, but this tax reduction shall on no account result in a negative basis tax.

When the particular provision applies, which divides the taxable income in two parts (one earner families or equivalent), the basis tax computed on the Income A and Income B, according to the scale, shall be reduced by € 2,327.26, but this tax reduction shall on no account result in a negative basis tax.

E. The family situation

Step five takes account of the family situation by granting the following tax reductions :

**Table 5. 6**  
**Reductions of the withholding tax for dependent children (<sup>78</sup>) and peculiar family situations**

Number of dependent children and peculiar family situations	Annual reduction in €
1	312
2	840
3	2,268
4	4,176
5	6,168
6	8,172
7	10,164
8	12,300
for each child beyond the eighth	2,220
single person	300
widow(er) not married again, with dependent children	312
single parent family	312
handicapped taxpayer ( <sup>79</sup> )	312
other dependent persons ( <sup>80</sup> )	312

<sup>78</sup> Disabled children count for two.

<sup>79</sup> This reduction applies to each of the spouses.

<sup>80</sup> This reduction is doubled for disabled dependent persons.

F. Computation of monthly amount

Where appropriate, 30% of the mandatory deductions implementing a group insurance contract or a precautionary provision for old age and premature death are deducted from the basic tax.

The amount of tax thus obtained is then divided by twelve so as to determine the amount of withholding tax to deduct from monthly earned income.

**5.3.2. Holiday pay and other exceptional allowances**

For holiday pay and other exceptional allowances **paid by usual employer**, the withholding tax on earned income to be deducted is calculated according to a special scale, whereby the rate varies according to the normal gross annual income and not to the income actually paid out.

*Table 5. 7*

*Scale of withholding tax on earned income applicable to the holiday pay paid by the employer and to other exceptional allowances*

Normal gross annual income in €	Withholding tax rate on earned income	
	Annual holiday pay	Other allowances
0.00 - 5,395.00	0.00%	0.00%
5,395.01 - 6,730.00	19.19%	23.23%
6,730.01 - 8,385.00	21.21%	25.25%
8,385.01 - 9,975.00	26.26%	30.30%
9,975.01 - 11,640.00	31.31%	35.35%
11,640.01 - 13,290.00	34.34%	38.38%
13,290.01 - 16,565.00	36.36%	40.40%
16,565.01 - 18,225.00	39.39%	43.43%
18,225.01 - 24,865.00	42.42%	46.46%
24,865.01 - 33,155.00	47.47%	51.51%
33,155.01 - 52,640.00	53.53%	53.53%
52,640.01 and more	55.55%	55.55%

Exemptions for dependent children are subsequently taken into account.

Where the annual amount of the normal gross salary does not exceed the maximum amount mentioned in the Table 5.8 according to the number of dependent children, the exceptional allowance is exempted up to the difference between the amount mentioned in the table and the annual amount of the normal gross salary.

**Table 5.8**  
**Withholding tax on exceptional allowances**  
**Exemption limit for dependent children**

Number of dependent children (1)	Maximum amount in €
1	6,761
2	8,805
3	12,721
4	17,028
5	21,306
6	25,585
7	29,863

(1) a disabled dependent child counts for two.

So the holiday pay of a taxpayer with four dependent children and a gross annual salary of € 15,000 is exempted up to € 17,028 - € 15,000 = € 2,028.

When the recipient of an exceptional allowance has no more than five dependent children and the annual amount of his normal gross salary does not exceed the amount which - according to the number of dependent children - is mentioned in column 3 or 4 of Table 5.9, a reduction is granted on the withholding tax ; that reduction is calculated according to the number of dependent children on the basis of the percentage mentioned in column 2 of the Table 5.9.

**Table 5.9**  
**Withholding tax on exceptional allowances**  
**Reduction for dependent children**

Number of dependent children (1)	Percentage of the reduction in %	annual amount of the normal gross salary beyond which no reduction is granted in €
1	7.5	16,585
2	20	16,585
3	35	18,245
4	55	21,565
5	75	23,225

(1) a disabled dependent child counts for two.

### 5.3.3. Salary arrears

The withholding tax on salary arrears is calculated according to a "reference salary". Which corresponds to the annual amount of the normal gross salary the beneficiary of the income enjoyed immediately before the revision which led to the payment of the arrears.

**Table 5.10**  
**Scale applicable to arrears**

Reference salary in €		Rate of withholding tax in %
0.00	- 5,840.00	0.00
5,840.01	- 8,120.00	6.06
8,120.01	- 10,460.00	12.12
10,460.01	- 14,460.00	18.18
14,460.01	- 16,795.00	19.19
16,795.01	- 31,515.00	31.31
31,515.01	- 46,575.00	38.38
46,575.01	- and more	42.42

Subsequently, the exemption for dependent children is taken into account using a particular method. In particular, where the reference salary does not exceed the maximum amount which, according to the number of dependent children, is mentioned in Table 5.8 sub 5.3.2., the salary arrears are exempted up to the difference between the said maximum amount and the reference salary.

#### **5.3.4. Compensations for termination**

Compensations for termination are subjected to a withholding tax on earned income as follows :

- when their gross amount does not exceed € 730.00, they are treated as an ordinary monthly salary;
- when they do exceed the gross amount of € 730.00, the withholding tax is determined according to the rules set forth above in respect of arrears, with the understanding that the reference salary to be taken into account in order to determine the rate of the withholding tax is the one upon which the calculation of the compensation was based, or, failing that, the salary which was paid to the recipient during the last period of normal activity in the service of the employer who pays the compensation.

#### **5.3.5. Attendance fees, commissions**

Attendance fees as well as compensation and allowances awarded occasionally are liable to withholding tax on earned income calculated as follows :

**Table 5.11**  
**Withholding tax on earned income payable on attendance fees, commissions and other occasional allowances**

Amount of the compensation in €		Withholding tax rate on earned income (in %)
0	- 500.00	27.27
500.01	- 650.00	32.32
650.01	- and more	37.37

#### **5.3.6. Students**

In derogation from all the provisions mentioned above, no withholding tax is due on remunerations paid or granted to students whose employment, performed in connection with a

written labour contract during the months of July, August and September, does not exceed one month, provided no contributions pursuant to the social security legislation are due on these remunerations, except for the solidarity contribution.

### 5.3.7. *Young workers*

No withholding tax is due on remunerations paid or granted to young workers who meet the conditions of eligibility for school-leavers' unemployment benefits (art. 36, §1, para.1, 1° to 3° of the Royal Decree of November 25th, 1991 imposing regulations on unemployment), provided the work is carried out under the terms of an employment contract starting in October, November or December 2002 and provided the gross amount of the remunerations does not exceed € 1,925 a month.

### 5.3.8. *Company managers*

Remunerations paid or allocated to company managers are liable to withholding tax on earned income. A distinction is made between periodical and non-periodical remunerations.

#### A. *Periodical remunerations*

The withholding tax is calculated on the basis of the scale applicable to wage and salary earners, except that the deduction of social contributions and standard expenses is made according to specific rules.

To allow these taxpayers to take account of the **social contributions for the self-employed** and of the "minor risk" sickness insurance contributions, a reduction is applied on their gross income, which is calculated as follows:

*Table 5. 12*  
*Periodical remunerations of directors*  
*Reduced base of withholding tax*

Gross amount of monthly remuneration in €			Reduction	
			on lower limit	% above the limit
0	to	890	300.00	
890	to	4,305	300.00	17.5%
4,305	to	6,230	897.63	13.0%
6,230		and more	1,147.88	0.0%

Deductible professional expenses are calculated at the single rate of 5% with a maximum of € 2,950.

**B. Non-periodical remunerations**

The withholding tax on earned income applicable on non-periodical remunerations is equal to 12 times the difference between :

- on the one hand, the withholding tax due on the sum of the periodical remunerations of the month in which the non-periodical remunerations are allocated, increased by one twelfth of the non-periodical remuneration,
- and, on the other hand, the withholding tax on earned income applicable on the periodical remunerations for the month in which the non-periodical remunerations are allocated.

**5.4. Advance payments (AP)**

Traders, company managers, members of liberal professions and companies are obliged to make advance payments of taxes in four instalments (quarterly instalments 10/4, 10/7, 10/10 and 20/12) <sup>(81)</sup>.

By paying these instalments, they prevent tax increases.

A dispensation of tax increase may be given on certain conditions, when a self-employed person sets up a business for the first time.

Moreover, all taxpayers liable to PIT can make advance payments to pay off in advance taxes which are not covered by withholding tax. Inasmuch as these payments cover the positive difference between the tax put on the tax roll and the amounts of the withholding taxes, they are awarded a bonus for advance payments made <sup>(82)</sup>.

For the income of the year 2002 the reference rate is 4%.

The taxation rates which apply in respect of the avoidance of tax increases and in respect of bonuses are the following :

**Table 5. 13**  
***Increases and bonuses of advance payments of the year 2002***

Increase		Bonus	
AP1	12%	AP1	6%
AP2	10%	AP2	5%
AP3	8%	AP3	4%
AP4	6%	AP4	3%

<sup>81</sup> These dates are valid for natural persons and for companies whose accounting year coincides with the calendar year. For other companies, the dates for AP are calculated from the 1st day of the accounting year.

<sup>82</sup> See page 41 and following.





<b>PART TWO</b> <b>INDIRECT TAXATION</b>
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CHAPTER ONE	VALUE ADDED TAX (VAT)	99
CHAPTER TWO	REGISTRATION DUTIES, MORTGAGE DUTIES AND COURT FEES	113
CHAPTER THREE	ESTATE DUTIES	119
CHAPTER FOUR	STAMP DUTIES	129
CHAPTER FIVE	TAXES ASSIMILATED TO STAMP DUTIES	131
CHAPTER SIX	CUSTOMS PROCEDURES UPON IMPORTATION, EXPORTATION AND TRANSIT	137
CHAPTER SEVEN	EXCISE DUTIES	149
CHAPTER EIGHT	THE LEVY ON ENERGY	165
CHAPTER NINE	ECOTAXES	169
CHAPTER TEN	LES TAXES SUR LES DEBITS DE BOISSONS	179
CHAPTER ELEVEN	TAXES ASSIMILATED TO INCOME TAXES	181



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## CHAPTER ONE VALUE ADDED TAX (VAT)

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### *What is new ?*

- *The possibility to submit quarterly returns, given to taxpayers whose turnover does not exceed € 500,000, has been abolished for taxpayers supplying mineral oils.*
- *New regulation in respect of VAT on “new” constructions.*

*This tax is governed by the Code of Value Added Tax (VAT Code) and the decrees taken for its implementation. Owing to the complexity of certain arrangements (for example, listing of taxable and exempted transactions, place of supply, intra-Community acquisition of goods, VAT rates, etc.), only the most frequently occurring cases are dealt with hereafter. The descriptions of the arrangements do not claim to be exhaustive.*

### 1.1. Definition

VAT is a tax on goods and services which is borne 'eventually' by the final consumer and which is levied in successive stages, namely at each transaction in the process of production and distribution. In view of the fact that at each stage of this process the tax paid on the inputs can be deducted, only the added value is taxed at that stage. VAT is therefore a non-cascading tax on consumption, which is paid off in instalments.

VAT is a proportional tax on the sales price excluding VAT. The rates applied may, however, vary according to the nature of the goods or services to be taxed.

The three main categories of taxable transactions are the following :

- the **supply of goods and the supply of services** carried out for a consideration by a person liable to VAT, when they occur within the country (Art. 2 VAT Code);
- the **importation** of goods into Belgium by any person whatsoever. Importation shall only refer to goods coming from a country which is *not* a Member State of the EU (Art. 3);
- the **intra-Community acquisition** of goods, where it occurs in Belgium and is made for a consideration. These are goods coming from any of the other Member States of the EU (Art. 3 bis).

### 1.2. Persons liable to VAT and legal persons that are not liable

The persons liable to VAT - or taxable persons - are of crucial importance in the process of levying the VAT. They have to charge VAT on the sales to their customers and can, on the other hand, deduct from the VAT levied on their sales the VAT that is levied on their own purchases, including investments. They therefore only pay to the Treasury the difference (= the tax on the value which they have added themselves.).

The concept of **VAT liability** is dealt with by the Articles 4 to 8bis of the VAT Code.

**A taxable person** is anyone who, in the performance of an economic activity, carries out, in a regular and independent manner, whether on a principal or accessory basis, with or without profit motive, the *supply of goods or services referred to in the VAT Code* (see point 1.3), irrespective of the place where that activity is carried on (Art. 4).

**Public authorities** and public bodies are *not taxable persons* for the activities which they carry on as *public authorities* (to this effect they are described as *non-taxable legal persons*, see below). They are, however, liable to tax for the activities where treatment as non-taxable persons would lead to significant distortions of competition (Art. 6).

The following persons shall also be liable to tax :

- a. those who, *without performing an economic activity*, carry on, within a given period and under certain conditions, certain transactions in respect of **buildings** (for example, the construction or acquisition of a building, the establishment or transfer of rights *in rem* - Article 8);
- b. those who occasionally supply a **new means of transport**, for a consideration and under certain conditions (Art. 8bis).

"Means of transport" shall be taken to include : certain ships and aircraft, as well as motorized land vehicles with an engine of more than 48 cm<sup>3</sup> cylinder capacity or of a power of more than 7.2 kW. Those means of transport are considered to be "new":

- in the case of land vehicles : if their supply occurs within six months after the date of their first entry into service *or* if their mileage does not exceed 6,000 km;
- for ships : if their delivery occurs within three months after the date of their first entry into service *or* if they have not sailed for more than 100 hours;
- for aircraft : if their delivery occurs within three months after the date of their first entry into service *or* if they have not flown for more than 40 hours.

Special categories also include :

- **exempt taxable persons** : physical or legal persons who carry on activities which are exempted from the tax pursuant to Article 44 of the VAT Code (see point 1.4.2.) (for example, teaching establishments, hospitals, certain cultural institutions, etc.);
- **non-taxable legal persons** : public authorities defined as non-taxable persons (see above : State, municipalities, public institutions,...) and certain holding companies.

### 1.3. Taxable transactions

Taxable activities include the following four major categories :

- supplies of goods (Art. 10 to 17);
- supplies of services (Art. 18 to 22);
- importations (Art. 23 to 25);
- intra-Community acquisitions of goods (Art. 25bis to 25septies).

#### 1.3.1. Supply of goods

A **supply of goods** is the transfer or assignment of the power to dispose of the goods as the owner thereof. Certain other transactions are also considered as supplies (Art. 10).

The term **goods** shall be understood to mean any tangible property including gas, electric current, heat, refrigeration and any rights *in rem* (other than the right of ownership) giving the holder thereof a right of user over *immovable property*, with the exception of certain long lease rights (Art. 9).

The **place of supply** of the goods is, as a rule, the place where the goods are put at the disposal of the acquiring party or assignee (Art. 15).

There are, however, a lot of exceptions to that rule. Where, for example, the goods are dispatched or transported by the supplier, the acquiring party or a third party (on their behalf), the place of supply shall be the place from which the consignment or transport is made to the acquiring party. Where the goods are installed or assembled by, or on behalf of, the supplier, the place of supply shall be the place of such an installation or assembly. For goods supplied from a country which is not a Member State of the EU and that are imported by the supplier into another Member State than the one where the consignment or transport arrives, the place of supply shall be, as a rule, in the Member State where the goods were imported into the European Union.

The place of supply, however, shall always be **in Belgium** when the goods, which are *not* new means of transport or are not assembled or installed by, or on behalf of, the supplier, are dispatched or transported by the latter from another Member State of the EU to Belgium (system of remote sales - Art.15,§ 4) and if the supply of the goods is carried out for :

- an exempt taxable person or a non-taxable legal person (up to the exempt amount of € 11,200, excluding VAT, see below);
- any other non-taxable person.

For the supply of goods *other than excise goods* (viz. mineral oils, alcohol and alcoholic beverages, as well as manufactured tobacco) **for a total amount per calendar-year not exceeding € 35,000** (excluding VAT), the place of supply shall be in this case **Belgium only** if this is so **chosen** by the supplier (for example, a mail-order selling firm established in another Member State of the EU).

The **time of supply** is, as a rule, the time at which the goods are placed at the disposal of the acquiring party or assignee (Art. 16), for example the time of arrival of the transport or consignment by, or on behalf of, the supplier, or the time at which the installation or assembly is finished. Sometimes special arrangements are applicable.

As a rule, the tax becomes due ("**taxable event**") at the time of delivery of the goods (Art. 17). In certain cases, however, another arrangement may apply (deferred payment till the 15th day of the following month - for intra-Community traffic - or liability arising upon invoicing, upon cashing or on a binding due date).

### **1.3.2. The supply of services**

A **service** is defined as any operation other than the supply of goods within the meaning of the VAT Code (Art. 18). Some of the services mentioned explicitly are : any physical or intellectual work, among which supplies under a contract to make up work from customer's materials, (that is to say delivery by a contractor to his customer of movable property made or assembled by the contractor from materials and objects entrusted to him by the customer for his purpose, whether or not the contractor has provided any part of the materials used), the supply of staff, the granting of the right to enjoy the possession of goods (except certain immovable goods mentioned in Art. 9), the supply of parking space for vehicles or of storage room, the supply of furnished rooms or a campground, the supply of food and beverages, the granting of a right of access to cultural, sporting or entertainment activities, services related to radio-distribution, cable TV, telecommunications, etc..

A service for a consideration shall be deemed to also include the performance by a taxable person of *work on real property* for the purpose of his economic activity (save a few exceptions) as also for his private needs or those of his personnel, and, more generally, free of charge or for purposes unrelated to his economic activity (Art. 19).

The **place where a service is supplied** is deemed to be the place where the person providing the service has established his principal seat of business or a fixed establishment (Art. 21). There are, however, *a lot of exceptions* to that rule, for example : for services connected with immovable property : the place where the latter is situated; for services relating to work on movable property : the place where the latter is located at the time the services are physically carried out (there are exceptions); for services relating to transport : the place where the transport occurs (in certain cases it can be the place of departure or any other place); for services relating to cultural, sporting and scientific activities or to food and beverages : the place where effective use and enjoyment of the services take place; for services related to advertising, to putting personnel at people's disposal, for services related to telecommunications, etc. : the place where the purchaser of the services has established the seat of his economic activity or a permanent establishment, in as far as he is established either outside the EU or in as far as he is a taxable person established inside the Union but not in the country where the supplier of the services is established, etc..

The **taxable event** occurs, as a rule, at the time the service is *completed* (Art. 22). The tax is then also due. In certain cases, another arrangement may apply (for example invoicing, cashing or binding due date).

### 1.3.3. Importation

The term **importation** is used for goods that are introduced into a Member State of the EU from outside the EU. The importation **takes place** in the Member State of the EU within the territory of which the goods are located at the time of entry into the Community (Art. 23). There are a number of exceptions to this rule, especially in relation with special customs procedures pursuant to Customs legislation.

The **taxable event** takes place, as a rule, in Belgium and the tax is due in this country upon importation of the goods into Belgium (Art. 24).

### 1.3.4. Intra-Community acquisition of goods

An **intra-Community acquisition of goods** is the acquisition of the right to enjoy the power of ownership with respect to tangible movable property which is dispatched or transported, by or on account of the seller or the purchaser, to the purchaser in *a Member State of the EU other than the one from which the goods are dispatched or transported* (Art. 25bis).

The tax shall be levied on intra-Community acquisitions of goods in Belgium for a consideration, which are made by :

- a taxable person acting in that capacity;
- a non-taxable person who is not entitled to exemption (see below), where the seller is a taxable person acting in that capacity (Art. 25ter).

Intra-Community acquisitions of goods are *not*, however, subject to the VAT in the following cases (Art.25ter) :

- 1° in a number of cases where their delivery in Belgium would also be exempted (for example acquisitions of sea-going vessels; acquisitions of aircraft mainly for the purpose of international transport; acquisitions of goods for diplomatic or consular establishments,...) (Art. 25ter, §1,1°);
- 2° if the acquisition is made (Art. 25ter, § 1, 2°) :
  - by a taxable person to whom the exemption arrangements are applicable (certain small enterprises, see point 1.9.1.);
  - by certain agricultural enterprises which are subject to a flat-rate system (see point 1.9.2.);
  - by a taxable person who effects exclusively the delivery of goods and the provision of services for which he is not entitled to deduction of the VAT (i.e. the taxable persons exempted, for example physicians, schools, hospitals, etc., see point 1.2 above);
  - by a non-taxable legal person;

within the limits of a total amount per calendar year of **€ 11,200** (excluding VAT). This arrangement *is not applicable to new means of transport, nor to excise goods* (which are anyway, under these circumstances, subject to VAT in Belgium, see below). The above-mentioned taxable and non-taxable legal persons can choose, however, to have *all* their intra-Community acquisitions of goods subjected to the tax in Belgium; this choice applies for a period of two calendar years at least;

- 3° if the acquisition is made by a taxable person not established in Belgium, but identified in another Member State of the EU for VAT purposes, with a view to subsequent delivery in Belgium by the latter taxable person to a taxable or non-taxable legal person identified in this country for VAT purposes and if, *in addition*, these goods, coming from *another* Member State of the EU than the one in which the purchaser is identified for VAT purposes, are dispatched or transported directly to the customer identified in Belgium for VAT purposes and if, *in addition* the latter is designated as the one who has to pay the VAT of the delivery made in Belgium (the so-called simplified system for triangular transactions) (Art. 25ter, § 1, 3°);
- 4° if we are concerned with used goods, works of art, collectors' pieces or antiques, which are sold by a taxable person who resells and is acting as such, and if, in addition, the goods have been subjected, in the EU Member State of departure, to the special system of taxation on the margin (see Art. 58, § 4), as well as in a number of other cases (Art. 25ter, § 1, 4°).

Intra-Community acquisitions, made in Belgium, of **new means of transport** are always subject to tax, irrespective of the person who makes them (a taxable person acting in that capacity, for example a car trader, a taxable person exempted, a non-taxable legal person *and* all private individuals).

The **location of an intra-Community acquisition of goods** is, as a rule, the place where the goods were located at the time of *arrival* of the consignment or transport to the purchaser (Art. 25quinquies). However, if the purchaser is unable to prove that the tax was levied in that manner, the location of intra-Community delivery shall be deemed to be within the Member State of the EU which has granted the VAT identification number under which the purchaser made that acquisition. Unless there is proof to the contrary, the intra-Community acquisition shall be deemed to have taken place in Belgium if the purchaser has a Belgian VAT identification number.

The **time of intra-Community acquisition of goods** is determined according to the same rules as govern the delivery of goods within the country (Art. 25sexies and Art. 16).

The **taxable event** takes place at the time of the intra-Community acquisition of goods and the tax is due on the 15th of the following month, unless the invoice for the delivery/acquisition was issued to the purchaser before that date (Art. 25septies).



## 1.4. Exemptions

These exemptions can be divided into two groups. On the one hand, there are the activities which are exempted from VAT, but which do not take away from those who carry on these activities the right to deduct the VAT levied on the goods and services supplied to them (see point 1.4.1).

On the other hand, there are exempt activities for which the exemption is based mainly on cultural and social considerations and which do take away from those who carry on these activities the right to deduct VAT levied on the goods and services supplied to them (see point 1.4.2).

### **1.4.1. Exportation, importation, intra-Community deliveries and acquisitions and international transport**

Exemptions that fall within this section are listed in Art. 39 to 42.

These are i.a. the following :

- exportation (i.e. to a place *outside* the EU);
- deliveries and intra-Community acquisitions of goods bound to be placed under certain procedures pursuant to customs legislation;
- deliveries of goods to a taxable person or to a non-taxable legal person in another Member State of the EU, who are required to subject their intra-Community acquisitions of goods to VAT (this does not apply to goods which are subject to the special system of taxation on the margin, see Art 58, § 4);
- intra-Community deliveries of new means of transport;
- importations, intra-Community acquisitions or supplies of goods placed under a warehousing regime other than customs warehousing and a certain number of related activities.
- certain importations, intra-Community acquisitions, reimportations and temporary importations and related services (for example, goods placed under certain customs procedures pursuant to Customs regulations);
- international transportation of passengers by sea or air;
- international transportation of goods originating from non-EU countries and certain related activities (for example loading and unloading);
- certain deliveries of ships and boats, aircraft, seaplanes, helicopters and similar craft, as well as certain related activities;
- certain deliveries and importations of goods and services for diplomatic and consular missions and for specified international organizations;
- the deliveries of gold to central banks.

### 1.4.2. Other exemptions

The description of these exempted services is given in Art. 44 and 44bis.

These are mainly :

- services provided by notaries, public attorneys and bailiffs;
- services provided by the medical and certain paramedical professions;
- services provided by hospitals and similar establishments;
- services provided by certain institutions for the aged and by nurseries;
- services provided by certain sports establishments;
- services provided by recognized educational institutions;
- services provided by certain other social and cultural institutions, such as libraries, theatres, cinemas (under certain conditions);
- services provided by authors, artists and interpreters of works of art;
- a supply of real property which is immovable by nature, *except* the supply of a *building* by certain taxable persons and occurring not later than December 31st of the second year following the one in which the building was first placed into service or entered into first possession. Similar rules apply to the establishment and transfer of rights *in rem*;
- lease-farming and renting of real property (except, for example, parking space and space for storing goods, hotels and camp sites and the leasing, under certain conditions, with VAT by real estate leasing companies of buildings for the performance of economic activities);
- insurance operations, except for services rendered by damage experts;
- most deposit and credit transactions, payment and collection transactions, and transactions relating to securities;
- a supply of post-stamps for the payment of postage, of revenue stamps and the like;
- betting, lotteries and other chance and money games (under certain conditions);
- the supply, intra-Community acquisition and importation of investment gold, under the conditions of Art. 44bis.

### 1.5. The tax basis

The tax basis of the VAT is defined in Art. 26 to 36.

As a rule, the tax basis of the VAT is the amount which the contracting partner of the supplier of goods or of the provider of services must pay to his supplier or provider. This amount also includes the commission, insurance and transportation costs as well as the taxes (except the VAT itself), duties and levies (Art. 26).

The tax basis does not include, however, certain price reductions and similar discounts, deposits on packaging, etc. (Art. 28).

Special arrangements apply notably to imports (where the basis is, as a rule, the customs value - Art. 34), to transactions for which the price is not expressed in cash only (the *normal value* as the tax basis - Art. 32) and to the services of travel agencies (Art. 29), etc.

There is a minimum tax basis for certain goods and services, such as for new buildings (Art. 35 and 36).

### 1.6. The VAT rates

The VAT is calculated on the tax basis at rates which depend on the nature of the transaction. Normally the rate to be applied is that which is applicable at the time at which the taxable event takes place. In many cases, however, the rate to be applied is that which is applicable at the time at which the tax is payable (for example, invoicing or cashing - Art. 38).

Besides a whole series of exceptions and special cases, the VAT rates are as follows:

0% : newspapers and certain weeklies;

6% : the goods and services listed in table A of the Annex to Royal Decree no 20, of July 20th, 1970, as last amended by the Royal Decree of January 18th, 2000, and by the Royal Decree of September 20th, 2000 establishing the rates of the VAT and the classification of goods and services under these rates.

Are mainly concerned here :

- live animals;
- vegetable products;
- foodstuffs (except ia margarine, caviar, and certain crustaceans, or molluscs);
- water supply;
- pharmaceutical products;
- books and certain periodicals;
- original works of art, collectors' pieces and antiques (only for importation of certain works of art further specified, collectors' pieces and antiques, as well as for certain supplies and intra-Community acquisitions of works of art further specified, on certain conditions);
- motor cars for invalids;
- coffins;
- certain medical appliances and instruments;
- supplies of goods by institutions for social promotion;

as also :

- agricultural services;
- transport of persons;
- maintenance and repair of certain goods in table A above;
- establishments for culture, sports and entertainment;
- copyrights; concerts and performances;

- hotels - camping sites;
- services rendered by undertakers;
- certain transactions relating to private dwellings which are at least 15 years old;
- certain transactions relating to private dwellings for handicapped persons and institutions for such persons;
- services supplied by institutions for social promotion;
- and a few other services.

Temporarily, from January 1st, 2000 till December 31st, 2002

The 6% rate will apply to :

- work on real property and certain other performances in connection with private dwellings that are at least 5 years old (under certain conditions – see the new Art. 1bis of VAT Code);
- repair of bicycles;
- repair of footwear and leather-ware;
- repair and remodelling of articles of clothing and household linen.

12% : the goods and services listed in table B of the Annex of the above mentioned Royal Decree no 20, last amended by the Royal Decree of January 18th, 2000 and by the Royal Decree of September 20th, 2000. We are concerned here mainly with plant-protection products, margarine, tyres and tubes for wheels of agricultural machines and tractors, certain solid fuels (ia coal, brown coal and coke), pay television and social housing.

21% : all goods and services subjected to VAT and not listed elsewhere.

### **1.7. The deduction of VAT (or deduction of the input tax)**

The deduction of VAT is governed by Art. 45 to 49.

The taxable person may deduct from the amount of the VAT he owes, the VAT which has been levied on the goods which were delivered to him or on the services which were provided to him, or on the goods imported by him or acquired within the Union, insofar as he uses these goods and services in economic activities *subject* to VAT or in economic activities which are exempted from VAT on account of exportation, intra-Community deliveries, international transportation (exemptions referred to under point 1.4.1. above) or certain other grounds (Art. 45 §1, 1ter and 1quater).

For the acquisition of new means of transport, an arrangement has been developed to avoid that certain purchasers (for example, private individuals) should suffer a double taxation on these vehicles (Art. 45, §1bis and art. 39bis). In all cases the VAT on these new means of transport must be paid at the rate applicable in Belgium.

Sometimes, however, the deduction of VAT is limited. For example, the deduction of VAT for the purchase of cars and car related supplies (for example fuel, oil,...) and services (for example maintenance, repairs,...) is limited to a maximum of 50%, in most cases. For the supply and intra-Community acquisition of manufactured tobaccos, spirits for end consumption and certain expenses relating to accommodation, food and drinks, among other things, no deduction of VAT is allowed (Art. 45, §2 to 4). There is, *as a rule*, no deduction of VAT either for goods acquired in connection with the special system of taxation on the margin (Art. 45, §5).

For "persons partially liable to VAT", i.e. taxable persons who are liable to VAT and who are involved both in activities subject to VAT and activities not subject, the deduction of the VAT charged on inputs is also limited, namely to the ratio of the turnover of operations which give entitlement to the deduction and the total turnover (under certain conditions, on the basis of the actual use of the inputs - Art. 46).

Periodical VAT returns must mention the VAT which is payable and the VAT which is deductible. Only the difference is paid to the Treasury. If the VAT to be deducted is greater than the VAT due, the difference is carried over to the next return (Art. 47). On specific request and subject to certain conditions, the balance referred to above is effectively refunded (Refund - Art. 75 to 80).

In the case of a partial deduction, a provisional amount to be deducted is fixed. That amount is *adjusted* after the expiration of the year in which the right to deduction arose. For the tax on capital goods, the period for adjustment is spread over five years and, for certain immovable property, over fifteen years.

### **1.8. Submission of returns and payment of the tax**

The correct operation of the VAT system requires that taxable persons fulfil a number of obligations. These concern accounting, the issuing of invoices, the filing of client lists, the submission of VAT returns and the payment of VAT. For certain companies, special (simplified) rules apply.

The basis for these obligations is laid down in Art. 50 to 55.

A VAT identification number, which includes the letters BE, is assigned by the VAT Administration to taxable persons (except to those who are not entitled to deduction, to small enterprises and to those who, regardless of the performance of an economic activity, transfer buildings under certain conditions or who occasionally deliver a new means of transport) (Art. 50).

In addition to the application for identification and the notifications of modification or cessation of an activity, most taxable persons must, in principle, file a VAT return showing the VAT to be paid and deducted and pay the amount due every month. The return and the payment must be submitted by the 20th of the following month at the latest. On December 24th at the latest, a deposit must be paid in respect of the VAT which will be payable for that month.

They must also file, each year, a list of the Belgian taxable persons to whom they made supplies (Art. 53quinquies). In respect of intra-Community supplies, a listing must be drawn up per quarter (Art. 53sexies).

Taxable persons whose turnover does not exceed € 500,000 a year may, if they comply with certain rules, submit quarterly returns (this provision does not apply to taxpayers supplying mineral oils). They must pay, in the course of the 2nd and 3rd month of each calendar quarter, a deposit equal to one third of the tax due for the preceding quarter. They can nonetheless opt for monthly returns.

### 1.9. Special systems

In view of the fact that the normal VAT system entails considerable obligations which, for certain small enterprises, are difficult to fulfil, special systems apply to certain enterprises. There is also a special system notably for non-taxable legal persons.

#### 1.9.1. *The special system for small enterprises*

The first group of arrangements is governed by Art. 56.

There is first the **flat-rate system** for small enterprises. This system applies only to enterprises which deal mainly with private individuals, which have a turnover not exceeding € 500,000 a year and which are active in certain sectors (e.g., bakers, butchers, hairdressers, ...). For each rate of VAT, their turnover is set according to a fixed rate. The deduction of the VAT charged on inputs is applied according to the normal rules. These companies can, however, opt for the normal VAT system.

In addition there is also the **tax exemption** for the supply of goods and services by enterprises whose annual turnover does not exceed € 5,580. They are not entitled, however, to deduct the VAT on their purchases. This exemption system does not apply to certain immovable transactions, nor to certain transactions with new means of transport. If these enterprises so wish, they can, under certain conditions, be subjected to the normal VAT system or the flat-rate system referred to above.

#### 1.9.2. *The special system for certain agricultural enterprises*

This special system is governed by Art. 57.

Agricultural enterprises are not liable to the obligations relating to invoicing, returns and the payment of VAT, except in respect of their intra-Community purchases exceeding the threshold of € 11,200. If the contracting partner is a taxable person who submits returns, the latter pays the agricultural enterprise a sum which is calculated at a fixed rate, as a compensation for the VAT charged on inputs. This amount is equal to 2 % of the purchase price for the supply of wood and 6 % for other supplies. The contracting partner is entitled, under certain conditions, to deduct this fixed compensation from the VAT which he owes the Treasury. Agricultural enterprises can opt for the normal VAT system. The normal system is compulsory, however, for certain agricultural enterprises (for example those which are in the form of a commercial company).

#### 1.9.3. *Other special systems*

The basis for these systems is given in Art. 58.

They govern the levy of VAT on *manufactured tobacco* (together with the excise duty - Art. 58, § 1 and 1bis), on *fish, crustaceans and molluscs* which are brought directly from the sea to the fish market (levy at the moment of sale at the fish market - Art. 58, § 2), on the *importation of goods which are sent in small consignments or carried in the luggage of travellers* (flat-rate calculation - Art. 58, § 3), on *second-hand goods, works of art, collectors' pieces and antiques* (on certain conditions there is a levy of VAT on the difference between the selling price and the purchase price (the so-called tax levy on the margin); however, the normal system can be chosen - Art. 58, § 4).

In addition, certain enterprises *in certain sectors* can, on certain conditions, be exempted from the obligations concerning the levy of VAT : accounting, submission of returns and payment of VAT to the Treasury. They must then, however, waive their entitlement to the deduction of VAT paid to their suppliers. This is notably the case for certain inland navigation firms, owners of laundries, dyeing and dry cleaning establishments and certain other small firms.

Finally, an exemption from VAT registration is granted for a very limited number of activities, notably for certain independent press correspondents.

#### **1.9.4. The special VAT return**

**The special VAT return** must be submitted by those *taxable persons* who do not submit periodic VAT returns and who :

- make certain intra-Community acquisitions (for example new means of transport, acquisitions of other goods for more than € 11,200 per year or they may, if they so choose, subject all acquisitions of the said goods to the VAT in Belgium);
- receive certain services such as advertisement, the intellectual work of certain consultants, the supply of staff, the renting of certain tangible movable property (except means of transport), etc. which are deemed to take place in Belgium and which are supplied by services providing persons who are not established in Belgium.

The special return must also be submitted by *non-taxable legal persons* (for example the State, municipalities, public institutions, see above sub point 1.2.) for a number of transactions referred to above (notably the intra-Community acquisition of goods).

The persons concerned must, *before* they effect these transactions, inform the VAT Administration according to certain rules. They are assigned a VAT identification number and must, in so far as they have performed the said transactions (purchases), submit *per quarter* the special VAT return referred to above, not later than the 20th day of the month after the quarter in which the VAT became due.





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## CHAPTER TWO

### REGISTRATION DUTIES, MORTGAGE DUTIES AND COURT FEES

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#### *What is new ?*

*In respect of the Flemish Region : the proportional registration duties on sales of real estate are lowered; introduction of transferability of rights previously paid.*

*These taxes are laid down and regulated by the Code of Registration Duties, Mortgage Duties and Court Fees and by the decrees issued for its implementation.*

#### 2.1. Registration duties

Registration duties are levied, as a rule, when a deed or written document is registered, i.e. at any formality which consists in copying, analysing or mentioning this deed or this written document by the receiver of registry fees and stamp duties in a register made for this purpose.

The following must be registered, among others :

- deeds drawn up by Belgian notaries;
- writs and summonses by Belgian bailiffs;
- decisions and judgements issued by Belgian courts and tribunals which contain dispositions subject to proportional duty;
- private deeds or notarial deeds signed abroad, relating to the transfer or declaration of property or usufruct of property situated in Belgium or relating to the lease, sub-lease or transfer of lease of such property;
- records of the public sale of tangible movable assets drawn up in Belgium;
- private contracts and notarial deeds drawn up abroad relating to the contribution of movable or immovable assets to Belgian companies which are legal persons.

The King can rule that certain kinds of deeds drawn up by notaries and bailiffs shall be exempt from the registration formality, but this exemption shall not entail the relief from duties applicable to these deeds. Deeds of protest, for instance, are exempt from registration duties.

It is also obligatory to present for formal registration a certain number of agreements for which there is no written document, including agreements relating to :

- the transfer or declaration of property or the usufruct of property located in Belgium;
- the transfer of assets to a Belgian company which is a legal person.

There are three types of registration duties: proportional duties, specific fixed duties and the general fixed duty.

In respect of certain deeds (such as certain transfers of real estate intended exclusively for education –see art. 161 of the Code), the registration rights are nil.

### **2.1.1. Proportional registration duties**

These duties amount in each case to a percentage of the tax base.

#### **A. Sale of real estate**

The duty is set at **12.5% (10% in the Flemish Region)** for sales, exchanges and all conveyancing agreements for valuable consideration, in respect of property or usufruct from real estate located in Belgium. The 12.5% (10%) duty is levied in principle on the contractual value of the real estate. This value cannot, however, be lower than the market value of the property as of the day of the agreement. For the sale of small rural properties and modest lodgings, this duty is reduced to 6% (5% in the Flemish Region). There are other reduced duties which are applicable to other operations.

In the Flemish Region, the tax base can, under certain conditions, be diminished by €12,500 in respect of acquisitions, by natural persons, of real estate intended to be used as their main residence. If, within two years after the acquisition of the said estate, the buyer acquires a new real estate intended to be his main residence, the registration rights paid formerly are deductible, under certain conditions, from (his part in) the rights to be paid in respect of the new acquisition; the total reduction in respect of the new acquisition shall not exceed € 12,500 and the “transferred” reduction granted to the buyer shall be proportional to his part in the new acquisition. The abovementioned reduction of the tax base does not come on top of the deductibility of registration rights formerly paid.

#### **B. Lease of real estate**

**In principle**, the duty is set at **0.2%** for leases, sub-leases and transfers of leases of property (or parts of buildings) located in Belgium and certain other similar operations. This duty is levied on the basis of the cumulated amount of rent and charges.

Nonetheless, in the case of lease, sub-lease and transfer of lease in respect of real estate (or parts of buildings) used exclusively for the accommodation of a family or a single person, the contracts are exempted from proportional registration duty and are liable to the fixed general duty (see 2.1.3.).

#### **C. Contribution of assets to Belgian companies**

The contribution of assets (immovable, movable, cash, credit, etc.) to Belgian companies is liable to **0.5%** duty. The duty is calculated on the total value of the assets which are assigned to the contributor. The taxable base cannot be lower than the market value of the assets transferred. There are exemptions in certain cases.

However, the contribution of real estate located in Belgium, which is, in whole or in part, used or intended for housing purposes, is liable to the **12.5%** duty when the contribution is made by natural persons.

D. Capital increase of Belgian companies

The increase in statutory capital, without contribution of new assets, of a Belgian company is liable to a **0.5%** duty. There are exemptions in certain cases.

E. Creation of mortgage

The creation of mortgage on real estate located in Belgium is liable to a **1%** duty calculated on the amount guaranteed by the mortgage. A reduced duty of 0.5% is applicable for the creation of certain mortgages (e.g. on ships or boats) and for similar operations.

F. Public sale of tangible movable property

The public sale of tangible movable property is liable to a **5%** duty calculated on the price and the expenses.

G. Donation duties

Donation duties apply to all donations of movable and immovable assets, regardless of their form, their object or their arrangements and regardless of the manner in which they are carried out. This duty is calculated on the market value of the donated goods, in principle without deduction of expenses.

The general rates are given in the tables below. Unlike the rates relating to inheritance tax (see chapter 3), they are the same all over the country.

## GENERAL RATES OF DONATION DUTIES

*Table I*  
*Donations between lineal relatives and between spouses*

Portion of value of the gift in €		Tax rates in %
from	to (included)	Lineal and between spouses
0,01	12,500	3
12,500	25,000	4
25,000	50,000	5
50,000	100,000	7
100,000	150,000	10
150,000	200,000	14
200,000	250,000	18
250,000	500,000	24
above	500,000	30

*Table II*  
*Donations to collaterals and non-relatives*

Portion of value of the gift in €		Tax rate in %		
from	to (included)	Between brothers and sisters	Between uncles or aunts and nephews or nieces	Between all other persons
0,01	12,500	20	25	30
12,500	25,000	25	30	35
25,000	75,000	35	40	50
75,000	175,000	50	55	65
above	175,000	65	70	80

The duty is calculated per donee and per portion of the gift.

*Example*

*By the same deed, a parent donates € 40,000 to child A and € 70,000 to child B. The duty to be levied is :*

*a) on the donation in favour of child A :*

- *on the first bracket (€ 0,01 to € 12,500) : € 12,500 x 3% = € 375.*
  - *on the second bracket (€ 12,500 to € 25,000) : € 12,500 x 4% = € 500.*
  - *on the remaining € 15,000 (€ 25,000 to € 50,000 bracket) : € 15,000 x 5% = € 750.*
- Total : € 375 + € 500 + € 750 = € 1,625.**

*b) on the donation in favour of child B :*

- *on the first bracket (€ 0,01 to € 12,500) : € 12,500 x 3% = € 375.*
  - *on the second bracket (€ 12,500 to € 25,000) : € 12,500 x 4% = € 500.*
  - *on the third bracket (€ 25,000 to € 50,000) : € 25,000 x 5% = € 1,250.*
  - *on the remaining € 20,000 : (€ 50,000 to € 100,000 bracket) : € 20,000 x 7% = € 1,400.*
- Total : € 375 + € 500 + € 1,250 + € 1,400 = € 3,525.**

**Total donation duty due on the donation deed : € 1,625 + € 3,525 = € 5,150 (leaving out of account possible deductions for dependent children).**

The amount of the donation duty thus depends

1. on the degree of kinship between the donor and the donee;
2. on the value of the portion of the donation received by each donee.

Donees having at least three children under 21 at the time of the donation are entitled to a tax reduction.

Provided certain conditions are met, a special, non-progressive 3% rate applies to donations of certain businesses and of shares of certain companies.

#### H.    Other operations

Other operations, which are not mentioned here, are also liable to proportional registration duty (example: sharing out of immovable assets, certain judgements and rulings).

The amount of proportional duties can in no case be lower than the general fixed duty (see 2.1.3.).

For a certain number of operations, there is an exemption from the proportional registration duty (for example: for operations liable to VAT).

#### **2.1.2. Specific fixed duties**

These duties are those of which the amount is a fixed sum which can nonetheless vary according to the nature of the deed.

These deeds are:

- protest actions : € 5;
- the permission to change one's first name (€ 490, with possible reduction to € 49), the permission to change one's family name (€ 49) or the permission to add another name or a particle to a name or to substitute a small letter for a capital letter (€ 740).

#### **2.1.3. General fixed duty**

The general fixed duty is levied on all deeds not explicitly included in the Code of Registration Duties, Mortgage Duties and Court Fees, as having been made subject to proportional duty or specific fixed duty, for example, marriage contracts, wills, most appendices to certified deeds, certain leases,... ; moreover, the general fixed duty is levied on deeds which are in principle subject to proportional duties, but which have been exempted by some provision of the Code, in as far as the Code does not explicitly relieve them from the registration duties.

The general fixed duty is **€ 25**.

### 2.2. Mortgage duty

Mortgage duty is levied on the registration of mortgage and privileges. It is **0.3%** of the amount in principle and accessories of sums for which the registration is contracted or renewed (with a minimum) of € 5. Certain types of registration (notably those payable by the State) are exempt from mortgage duty.

### 2.3. Court fees

These duties are levied on certain operations carried out in the law-clerk's office of courts and tribunals. These are fixed duties which vary according to case and which are levied either by operation or by the page of the document concerned. A distinction is made between *enrolment duty* (registration of lawsuits in the role), *drawing-up duty* (levied on the deeds of the clerk of the court), *expedition duties* (on expeditions, copies or extracts which are delivered in clerk's offices), and *enrolment duty* in the registry of commerce, the registry of handicrafts and the registers of economic interest groups. There are a whole series of exemptions.

## CHAPTER THREE ESTATE DUTIES

### *What is new ?*

*As regards inheritances opened in the Walloon Region : the rates of estate duties applying to legal cohabitants are brought into line with those applying to spouses.*

*These duties are laid down and regulated by the Estate Duty Code and the decrees issued for its implementation.*

### 3.1. Inheritance tax and transfer duty upon death

#### 3.1.1. Generalities

Estate duties distinguish between inheritance tax and transfer duty upon death.

**Inheritance tax** is charged on the net value of the estate of a deceased inhabitant of the Kingdom, i.e. on the value of the aggregate of all the property belonging to the deceased (movable or immovable, located in the country or outside the country), after deduction of the latter's duly established liabilities and the funeral costs.

**The transfer duty** upon death is a tax which is levied on the value without deduction of charges relating to immovable property situated in Belgium, collected through the succession of a non-inhabitant of the Kingdom. The tariff is the same as that for inheritance tax (see below).

The inheritance tax and the transfer duty upon death are calculated by means of a declaration which must be filed by the legal successors within 5, 6 or 7 months after the decease, according as to whether the testator died in Belgium, in Europe or elsewhere.

The property which, according to the evidence supplied by the administration, the deceased disposed of as a gift in the three years preceding his death is considered as part of his inheritance if the donation has not been liable to the donation duty (see 2.1.1.G).

The gross tax base is in principle the market value of the goods as of the day of the death. Tax rates vary :

1. according to the degree of kinship between the beneficiary and the deceased,
2. according to the net share inherited <sup>(83)</sup> by each of the heirs,

<sup>83</sup>

Exception : As regards inheritances opened in the Flemish Region : where one or more heirs belong to the group of "other persons", the tax rates vary according to the **sum** of the net shares devolving to these persons (see below under 3.1.2. A Inheritances opened in the Flemish Region, table II, notion of "taxable amount"; see also : "remarks" sub 1).

3. according to the Region where the inheritance is opened. If the deceased was a resident, the inheritance is opened in the Region where his last *fiscal* domicile was located. Where however the deceased had been fiscally domiciled in more than one Region during the last five years preceding his death, the largest-lasting of the domiciliations will determine the Region where the inheritance is opened. If the deceased was not a resident, the inheritance is opened, *in principle*, in the Region where the estate is located. The taxes are computed according to brackets and tax rates that can differ depending on the Region where they are levied.

### 3.1.2. Rates and particular provisions per Region

#### A Inheritances opened in the Flemish Region

**Table I - Inheritances between lineal relatives, between spouses and between cohabitants**

Bracket of the net share in €		Tax rates in %
From	To	Upon lineal relatives and between spouses
0.01	50,000	3
50,000	250,000	9
More than	250,000	27

« Cohabitant » shall be construed as being :

- 1° the person who, at the date the inheritance is opened, in line with the terms of Book III, Title V bis of the Civil Code, legally cohabits with the testator ;
- or
- 2° the person or persons who, at the date the inheritance is opened, has or have been living together with the testator, sharing his household, for at least one year without interruption. These conditions are also deemed to be met when the cohabitation and the sharing of the household have become impossible, due to force majeure, between the cohabitation period of one uninterrupted year and the testator's death. A certificate of residence holds a refutable assumption of uninterrupted cohabitation and shared household.

**Table II - Inheritances between brothers and sisters or between « others »<sup>(84)</sup>**

Bracket of taxable amount in €		Tax rates in %	
From	To	Between brothers and sisters	Between « others »
0.01	75,000	30	45
75,000	125,000	55	55
More than	125,000	65	65

« Taxable amount » shall be construed as follows :

<sup>84</sup> These rates also apply where the inheritance devolves on brothers and/or sisters of the deceased or on "other persons" (In the Flemish Region, this category also includes collateral heirs of the third degree, who in the other Regions belong to the category of "uncles or aunts and nephews or nieces") who are not entitled to the rates applying to cohabitants (Table I).



- as far as brothers and sisters are concerned : the net share of each of the brothers and sisters upon whom the estate devolves;
- as far as “others” are concerned : the **sum** of the net shares devolving upon these persons.

Remarks :

1. The following distinction should be made with respect to inheritance tax :
  - if the inheritance devolves upon lineal relatives or on the surviving spouse or cohabitant, table I applies twice for each of them : once on the portion representing the net immovable property and once on the portion representing the net movable property;
  - if the inheritance devolves upon brothers or sisters, table II applies to the global net share of each of them;
  - if the inheritance devolves upon other persons, table II applies to the **aggregate** of the global net shares of the assignees of the group <sup>(85)</sup>.
2. The lineal heirs and the surviving spouse or cohabitant are entitled to a tax reduction, which is degressive and shall not exceed € 500. No reduction shall be allowed for inheritances of more than € 50,000. For shares up to € 50,000, the reduction amounts to € 500 x (1 - share/50,000).
3. The testator’s brothers and sisters are also entitled to a tax reduction on their share, inasmuch as it does not exceed € 75,000. If the share does not exceed € 18,750, the reduction amounts to € 2,000 x share/20,000. If the share exceeds € 18,750 but does not exceed € 75,000, the reduction amounts to € 2,500 x (1 - share/75,000).
4. All other heirs who are neither lineal heirs nor spouses or cohabitants, brothers or sisters are entitled to a tax reduction, provided the **sum** of their shares does not exceed € 75,000. That reduction is apportioned between the heirs in proportion to their share of the inheritance. Where the aggregate of the shares does not exceed € 12,500, the reduction amounts to € 2,000 x (aggregate of the shares)/12,500. Where the aggregate exceeds € 12,500 but does not exceed € 75,000, the reduction amounts to € 2,400 x (1 - [aggregate of the shares]/75,000).
5. Where transfer duties are due on shares such as mentioned sub 2, 3 and 4 above, the same reductions apply, on the understanding that the “gross” share is taken into consideration for the computation of the duties.
6. There is a € 75 tax reduction in favour of the children under 21 for each whole year remaining until they reach the age of 21, whatever be the value of the net share, as well as a reduction, in favour of the surviving spouse or cohabitant, amounting to half the total amount of the additional reductions to which the common children are entitled. These reductions apply to all net shares, whatever be their amount, and they come on top of the reduction the children are entitled to on behalf of 2 and 5 above.

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<sup>85</sup> The individual liabilities of each of the assignees are then computed by apportioning the global tax due among the heirs concerned, in proportion to the share of the inheritance that devolves to each of them.

7. Social rights in real property UCITs recognized by the Flemish government in the framework of the financing and constructing of services providing apartment buildings or residential complexes are exempt from inheritance tax. To be entitled to this exemption, several conditions must be met, which are enumerated in art. 55bis of the Estate Duty Code, applicable in the Flemish Region, and in the relevant implementing orders by the Flemish government <sup>(86)</sup> (Decree of December 21st, 1994, providing regulations for the execution of the 1995 budget, modified by the Decree of December 20th, 1996, providing regulations for the implementation of the 1997 budget, and the Order of May 3rd, 1995, providing exemptions in respect to inheritance tax in connection with social rights in companies established in the framework of the realization and/or financing of investment programs in respect of service flats, amended by the Order of October 10th, 1995, by the Order of December 3rd, 1996 and by the Order of February 23rd, 1999).
8. Assets and shares of family businesses or family companies are exempt from inheritance tax, provided certain conditions are met. Numerous stipulations must be met in order to obtain or maintain this advantage. We therefore refer to art. 60bis of the Estate Duty Code, applicable in the Flemish Region.
9. If, within a year of the death of the deceased, the goods which are received through inheritance are transferred anew through death, the inheritance tax on this second transfer is reduced.

**B. Inheritances opened in the Walloon Region**

*Table I - Inheritances between lineal relatives, between spouses and between legal cohabitants*

Bracket of the net share in €		Tax rates in %
From	to (including)	Upon lineal relatives and between spouses and legal cohabitants
0.01	12,500.00	3
12,500.01	25,000.00	4
25,000.01	50,000.00	5
50,000.01	100,000.00	7
100,000.01	150,000.00	10
150,000.01	200,000.00	14
200,000.01	250,000.00	18
250,000.01	500,000.00	24
More than	500,000.00	30

“Legal cohabitant” shall be construed as being the person who, on the date the inheritance was opened, was living together with the testator, both having signed, at least one year before the opening of the inheritance, a declaration of legal cohabitation in accordance with the provisions of Book III, title Vbis of the Civil Code, except where the two persons are brothers and/or sisters, uncle and nephew/niece or aunt and nephew/niece.

<sup>86</sup> Considering the conditions of application and considering the fact that no subscription for shares was possible before November 14th, 1995, exemption from estate duties will only be possible with regard to deaths occurred as from November 14th, 2000.

*Table II - Inheritances between collateral relatives and between non-relatives*

Bracket of the net share in €		Tax rate in %		
From	to (including)	Between brothers and sisters	Between uncles or aunts and nephews or nieces	Between all other persons
0.01	12,500.00	20	25	30
12,500.01	25,000.00	25	30	35
25,000.01	75,000.00	35	40	50
75,000.01	175,000.00	50	55	65
More than	175,000.00	65	70	80

**Remarks :**

1. No inheritance tax is due on any inheritance of which the net assets do not exceed € 620.
2. The lineal heirs, the surviving spouse or legal cohabitant are entitled to an exemption of € 12,500, which means there is no liability to inheritance tax for this bracket of € 12,500. This abatement is increased, in favour of each of the children under 21, by € 2,500 for each whole year remaining until they reach the age of 21 (additional abatement) and also, in favour of the surviving spouse or legal cohabitant, by half the total amount of the additional abatements to which the common children are entitled.
3. A reduction of the inheritance tax and of the transfer duty upon death is granted to each heir, legatee or donee of whom, at the opening of the succession, at least three children were alive and under 21.
4. Assets and shares of certain businesses or companies which are part of inheritances are charged at a 3% rate, provided certain conditions are met. In order to obtain and to maintain this advantage, several conditions must be met, which are enumerated in art. 60bis of the Estate Duty Code, applicable in the Walloon Region. The tax base of the inheritance to be taken into consideration for this reduction is added to the rest of the share received in order to determine the progressive inheritance tax for the estate (see Estate Duty Code, art. 66ter, applicable in the Walloon Region).
5. If, within a year of the death of the deceased, the goods which are received through inheritance are transferred anew through death, the inheritance tax on this second transfer is reduced.

**C. Inheritances opened in the Region of Brussels-Capital****Table I - Inheritances between lineal relatives and between spouses**

Bracket of the net share in €		Tax rates in %
From	to (including)	Upon lineal relatives and between spouses
0.01	12,500.00	3
12,500.00	25,000.00	4
25,000.00	50,000.00	5
50,000.00	100,000.00	7
100,000.00	150,000.00	10
150,000.00	200,000.00	14
200,000.00	250,000.00	18
250,000.00	500,000.00	24
More than	500,000.00	30

**Table II - Inheritances between collateral relatives and between non-relatives**

Bracket of the net share in €		Tax rate in %		
From	to (including)	Between brothers and sisters	Between uncles or aunts and nephews or nieces	Between all other persons
0.01	12,500.00	20	25	30
12,500.00	25,000.00	25	30	35
25,000.00	75,000.00	35	40	50
75,000.00	175,000.00	50	55	65
More than	175,000.00	65	70	80

**Remarks :**

1. No inheritance tax is due on any inheritance of which the net assets do not exceed € 620.
2. The lineal heirs and the surviving spouse are both entitled to an exemption of € 12,500, which means there is no liability to inheritance tax for this bracket of € 12,500. This abatement is increased, in favour of each of the children under 21, by € 2,500 for each whole year remaining until they reach the age of 21 (additional abatement) and also, in favour of the surviving spouse, by half the total amount of the additional abatements to which the common children are entitled.
3. A reduction of the inheritance tax and of the transfer duty upon death is granted to each heir, legatee or donee of whom, at the opening of the succession, at least three children were alive and under 21.

4. Assets and shares of certain small and medium enterprises which are part of inheritances are charged at a 3% rate, provided certain conditions are met. In order to obtain and to maintain this advantage, several conditions must be met, which are enumerated in art. 60bis of the Estate Duty Code, applicable in the Region of Brussels-Capital. The tax base of the inheritance to be taken into consideration for this reduction is added to the rest of the share received in order to determine the progressive inheritance tax for the estate (see Estate Duty Code, art. 66ter, applicable in the Region of Brussels-Capital).
5. If, within a year of the death of the deceased, the goods which are received through inheritance are transferred anew through death, the inheritance tax on this second transfer is reduced.

## INDIRECT TAXATION

### Example

A person who is the father of three children dies. Upon the time of his death, he was domiciled in the Region of Brussels Capital. Taking account of the applicable dispositions (marriage contract, will, liabilities, funeral expenses, etc.), the sum which the deceased leaves to his spouse (47 years old) and his three children comes to € 225,000. The children are aged 22 years, 21 years and 19 years nine months respectively. The inheritance includes only goods which are owned outright.

The inheritance is divided as follows : the surviving spouse receives the beneficial ownership of the total amount. The children receive the bare property rights, each having one third. The beneficial ownership of the spouse is set at a standard rate by multiplying the annual proceeds from the goods, evaluated at 4% of the value of full property rights, by a coefficient which varies according to the age of the beneficial owner (47 years : coefficient 14).

#### 1. Partition of the inheritance

Spouse: € 225,000 x 4% x 14 = € 126,000  
 Children: € 225,000 – € 126,000 = € 99,000  
 for each child: € 99,000/3 = € 33,000

#### 2. Calculation of exemptions

1st child (the eldest): € 12,500  
 2nd child: € 12,500  
 3rd child (the youngest): € 12,500 + 1 x € 2,500 = € 15,000  
 Surviving spouse: € 12,500 + € 2,500 x 1/2 = € 13,750

#### 3. Calculation of inheritance taxes

##### a) Surviving spouse

- Taxable amount: € 126,000  
 - Tax on the € 0.01 - € 12,500 bracket: € 12,500 x 3% = € 375  
 - Tax on the € 12,500 - € 25,000 bracket: € 12,500 x 4% = € 500  
 - Tax on the € 25,000 - € 50,000 bracket: € 25,000 x 5% = € 1,250  
 - Tax on the € 50,000 - € 100,000 bracket : € 50,000 x 7% = € 3,500  
 - Tax on the € 100,000 - € 126,000 bracket: € 26,000 x 10% = € 2,600

**Total : € 8,225**

##### CALCULATION OF EXEMPTIONS:

€ 0.01 – € 12,500 bracket: € 375 (= € 12,500 x 3%)  
 € 12,500 - € 13,750 bracket: € 50 (= € 1,250 x 4%)

**Total tax to be deducted : € 425**

**Final amount : € 8,225 - € 425 = € 7,800**

##### b) Children

	<u>1st child</u>	<u>2nd child</u>	<u>3rd child</u>
Taxable amount	€ 33,000	€ 33,000	€ 33,000
Tax (on the brackets)			
€ 0.01 - € 12,500	€ 375	€ 375	€ 375
€ 12,500 - € 25,000	€ 500	€ 500	€ 500
€ 25,000 - € 33,000	€ 400	€ 400	€ 400
<b>Total</b>	<b>€ 1,275</b>	<b>€ 1,275</b>	<b>€ 1,275</b>

##### Calculation of exemptions (on the brackets respectively)

€ 0.01 - € 12,500	€ 375	€ 375	€ 375
€ 12,500 – € 15,000	-	-	€ 100
<b>Total tax to be deducted</b>	<b>€ 375</b>	<b>€ 375</b>	<b>€ 475</b>
<b>FINAL AMOUNT</b>	<b>€ 900</b>	<b>€ 900</b>	<b>€ 800</b>

### 3.2. The compensatory tax for inheritance tax

The compensatory tax for inheritance tax is levied annually on the total assets which non-profit making companies own in Belgium.

The rate of the tax is **0.17%**.

The tax is not payable if the value of the taxable assets does not exceed € 25,000.

### 3.3. The annual tax on unit trusts, credit companies and insurance companies

Belgian unit trusts, credit companies and insurance companies, as defined in art. 161 of the Inheritance Tax Code, are subject to this tax.

1. Where *unit trusts* are concerned : the tax is due, as a rule, on the unit trusts' inventory value on January 1st of each tax year ;
2. Where *credit companies* are concerned : the tax is due on a part of the amount of the savings deposits on January 1st of each tax year. This part is computed by means of the ratio between the income that is not to be brought into charge under income tax regulations and the total amount of the income granted for the year immediately preceding the year of assessment ;
3. Where *insurance companies* are concerned : the tax is due on the total amount of the mathematical and technical reserves related to life policies the income of which is not taxable under income tax regulations ;
4. As far as *credit companies and insurance companies* are concerned that have the form of *co-operative companies* recognized by the National Council of Co-operation : the tax also applies to part of the statutory capital on January 1st of the assessment year. That part is computed by means of the ratio between the total amount of the dividends that are not taxable under income tax regulations and the total amount of the dividends distributed in the business year preceding the year of assessment.

The tax rate is **0.06%**.

The tax is due on January 1st of each year and the payment shall be made not later than March 31st of that year (save a few exceptions).

### 3.4. The annual tax on Co-ordination centres

Co-ordination centres are liable to this tax on the 1st of January of each year. The tax amounts to € 10,000 per fulltime worker who is employed there on the 1st of January of each year. The total amount of the tax chargeable to one and the same Co-ordination centre shall not exceed € 100,000.





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**CHAPTER FOUR**  
**STAMP DUTIES**

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*These taxes are laid down and regulated by the Code of stamp duties and by the decrees issued for its implementation.*

A stamp duty is a tax levied on certain deeds and written documents which are defined in the Code of Stamp Duties (hereinafter referred to as Code).

The tariffs vary according to the type of deed or written document:

- \* **€ 7.50** per sheet of limited surface (twice this amount if the surface is exceeded), for notarial deeds and records relating to public sales of tangible movable assets drawn up by bailiffs as well as repertories of which the drawing-up by notaries and bailiffs is mandatory (art. 4 and 5 of the Code);
- \* **€ 7.50** per indivisible group of four pages of limited surface (twice this amount if this surface is exceeded), for authentic copies, copies or extracts of the aforementioned documents as well as the duplicates of repertories drawn up by notaries (art. 4 and 5 of the Code);
- \* **€ 3** per sheet for documents drawn up by the recorders of mortgages (art. 7 of the Code);
- \* **€ 5**, notably for extracts from the registry of births, marriages and deaths, deeds concerning nationality, certificates of identity, nationality, domicile or residence, registration of motor vehicles, private contracts relating to the transfer or declaration of immovable property, or relating to lease, sub-lease or transfer of lease in respect of immovable assets, as well as a whole series of other documents (art. 8 of the Code);
- \* **€ 2** for certificates, duplicates or extracts, delivered by the recorders of mortgages, as well as certain other documents (art. 9 of the Code);
- \* **€ 0.15** notably for certain documents (including loan deeds, account closures and statements) drawn up by bankers for private citizens (art. 11 of the Code);
- \* **€ 5** for all deeds and documents, other than those which are priced by articles 4 to 12 (art. 21 of the Code).

The deeds and written documents priced by articles 4 and 8 to 12 are liable to stamp duty as and when they are drawn up (art. 22 of the Code). The stamp duty of repertories and registers priced by articles 5 and 7 is payable when they are implemented (art. 23 of the Code).

All other deeds and written documents are liable to stamp duty by virtue of:

1. their presentation for formal registration;
2. their depositing in the minutes of a notary;
3. their appending to a deed or register which is liable to stamp duty under the terms of articles 4 to 12 (art. 25 of the Code).

A whole series of exemptions are provided, notably for deeds concerning electoral matters, military service, the execution of tax laws, certain banking operations, town and country planning, deeds of protest, etc.

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## CHAPTER FIVE

### TAXES ASSIMILATED TO STAMP DUTIES

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*These taxes are laid down and regulated by the Code of taxes assimilated to stamp duty (CTASD) and the decrees issued for its implementation.*

#### 5.1. Tax on stock-exchange and carry-over transactions

##### 5.1.1. Tax on stock-exchange transactions

The following are liable to the tax (Art. 120 of the CTASD) :

- 1° *any purchase and any sale* of public securities carried out or concluded in Belgium (including any conversions, in respect of the same person, of participating interests in a given department of an investment company into participating interests in another department of the same investment company);
- 2° *any delivery* of these securities to the *subscriber*, carried out subsequent to an appeal to the public through public issue, exhibition, offer or sale;
- 3° *any repurchase* by an open-end investment company of its own shares, if this transaction relates to *capitalization shares*;
- 4° *any conversion*, in respect of the same person, of participating interests within a given department of an investment company, when this results in *a change* in the way in which the net revenue from these interests is allocated.

There are various exemptions (Art. 126<sup>1</sup> CTASD), notably for transactions in which no professional intermediary intervenes or contracts either on behalf of one of the parties or on his own behalf, for transactions made on their own behalf by financial intermediaries, insurance companies, pension funds, undertakings for collective investment and non-residents, for the delivery of securities representative of the Belgian public debt (save State Notes) and of loans issued by the Regions or the Communities, for transactions concerning treasury bonds or linear bonds issued by the State, for the conversions, in respect of the same person, of distribution shares of a given investment company into distribution shares of the same investment company, for transactions concerning short term treasury bonds issued by the National Bank of Belgium, for loans on stock and for a number of other transactions.

The applicable tax base (Art. 123 CTASD) :

- for *purchases, acquisitions or subscriptions* : is the amount to be paid by the purchaser or the subscriber, excluding the brokerage of the intermediary;
- for *sales or transfers* : is the amount to be received by the seller or the transferor, including the brokerage of the intermediary;
- for *repurchases* by an investment company of its own capitalization shares : is the net inventory value of the shares, without deduction of the flat-rate compensation;
- for *conversions*, in respect of a given person, of participating interests in a given department of an investment company into participating interests in another department of the same company, and conversions within a given department as described under item 4° above : is the net inventory value - on the basis of which the conversion is made - of the new shares issued as a replacement for the converted shares, increased by the flat-rate placing provision and the flat-rate compensation to cover the cost of the acquisition of the assets in the relevant department of the investment company.

The tax is levied *both on the sale and on the purchase*. In the case of *subscription*, the tax is payable only in respect of the supply of the securities. In the case of a *repurchase by an investment company of its own capitalization shares*, the tax is due solely in respect of the transfer of the shares to the investment company. In the case of a '*conversion*', the tax is due solely in respect of the delivery to the subscriber of the new shares, issued as a replacement for the converted shares (Art. 122 CTASD).

The rates are as follows (Art. 121 CTASD) :

1. Upon a sale or a purchase for valuable consideration (secondary market) :
  - a. **1.70 per thousand** : normal rate;
  - b. **0.70 per thousand** : notably for securities of the public debt of the Belgian State or foreign States; loans issued by the Communities, the Regions, the provinces and the municipalities (both national and foreign); company bonds; participating interests in investment funds; shares issued by investment companies, etc.

However :

- the transfers and acquisitions for valuable consideration of capitalization shares of an investment company are subject to a rate of **0.50 %**;
  - the repurchase by an investment company of its own capitalization shares is subject to a rate of **0.50 %**;
  - the conversions, from one department to another, of capitalization or distribution shares into capitalization shares, are subject to a rate of **1 %**;
  - the conversions, from one department to another, of capitalization shares into distribution shares, are subject to a rate of **0.50 %**;
  - the conversions, within a given department, of distribution shares into capitalization shares, are subject to a rate of **1 %**;
  - the conversions, within a given department, of capitalization shares into distribution shares are subject to a rate of **0.50 %**.
2. Upon the delivery of securities to the subscriber, carried out subsequently to an appeal to the public (primary market) :

- a. **3.50 per thousand** : normal rate;
- b. **1.40 per thousand** : State Notes, public debt securities on foreign States; loans issued by the provinces and the communes (both national and foreign); company bonds; participating interests in undertakings for collective investments; distribution shares of investment companies, etc.

Subscriptions to capitalization shares of an investment company are however subject to a rate of **1 %**.

The amount of the tax must not exceed € 250 per transaction € 375 in the case of a repurchase by an investment company of its own capitalization shares, in the case of conversions subject to the rates of **0.50 %** and **1 %**, and in the case of subscriptions to capitalization shares - Art. 124 CTASD).

### **5.1.2. Taxes on carry-over**

This tax is levied on carry-over transactions on public securities, in which a professional intermediary for stock market transactions intervenes on behalf of a third party or on his own behalf (Art. 138 CTASD).

The rate amounts to **0.85 per thousand** (Art. 138 CTASD).

The tax is payable by both parties. It is not due, however, by financial intermediaries, insurance companies, pension funds, undertakings for collective investments or non-residents (Art. 139 CTASD).

Exemptions are provided for transactions which centre on treasury bonds or linear bonds issued by the State, treasury bills or deposit certificates issued pursuant to the law of July 22, 1991, or also on bonds representative of loans issued by certain international organizations, if these transactions are carried out by non-residents, on short term treasury bonds issued by the National Bank of Belgium and on cession-retrocession of securities (Art. 139bis CTASD).

### **5.2. Tax on delivery of bearer securities**

This tax is levied on all deliveries of bearer securities, whether they relate to Belgian or to foreign public funds (Art. 159 CTASD). Deliveries to financial intermediaries established in Belgium are not liable to the tax, however (Art. 159 CTASD).

The tax rate is set at **0.20%** (Art. 160 CTASD).

The tax is calculated (Art. 161 CTASD) :

1. in the case of an *acquisition for valuable consideration or of a subscription* : on the amounts to be paid by the purchaser or the subscriber (excluding the brokerage of the intermediary and the tax on stock exchange transactions) ;

2. in the case of the *conversion of registered securities into bearer securities* or in the case of the *withdrawal of securities which were in open custody* : on the market value of the securities (excluding interest) on the day of the conversion or the withdrawal. This value shall be estimated by the person realising the conversion or by the depositor. As to the securities mentioned hereafter, the basis of assessment is computed as follows :
  - 2.1. for securities officially quoted on a Belgian stock exchange : the last quotation published before the date of the conversion or withdrawal ;
  - 2.2. for instruments of debt not officially quoted : the nominal value of the capital represented by the debenture ;
  - 2.3. for participation rights in open-end UCITs : the last stocktaking value before the date of the conversion or withdrawal.

Exemptions exist (Art. 163 CTASD) for :

- 1° deliveries of securities for valuable consideration, where no professional intermediary intervenes or enters into an agreement on behalf of one of the parties ;
- 2° deliveries to non-residents of foreign public securities or certificates representing foreign public funds, which were in open custody with certain institutions.
- 3° deliveries of securities issued by the State, the Regions or the Communities in foreign currencies, where those deliveries take place abroad or where the receiver is a non-resident.

### **5.3. Annual tax on insurance contracts**

This tax is levied on insurance contracts which fulfil one of the following three conditions (Art. 173 CTASD) :

- the insurer is established in Belgium;
- the insured party has his permanent residence in Belgium;
- the contract relates to movable or immovable property situated in Belgium.

Various contracts are exempt from this tax, notably contracts for reinsurance, certain insurances in the context of social security, insurances against risks incurred abroad, life insurance contracts taken out individually, hull insurances for sea-going vessels, inland vessels and certain aeroplanes, etc. (Art. 176<sup>2</sup> CTASD).

The tax base is the amount of the premiums, contributions and charges to be paid by the insured party in the course of the tax year (Art. 176<sup>1</sup> CTASD).

There are three rates (Art. 175<sup>1</sup> and 175<sup>2</sup> CTASD) :

- \* **9.25%** : normal rate;
- \* **4.40%** : rate notably for life insurances (not taken out individually), liabilities contracted by pension funds and life annuity contracts;
- \* **1.40%** : rate for insurances relating to goods handled by international transport or to goods loaded on inland-vessels as well as for compulsory motor third party insurance and for property damage insurance for vehicles whose gross mass is not less than 12 tons and which are used exclusively for transport of goods by road.

#### **5.4. Annual tax on profit-sharing schemes**

Sums which are divided up for profit sharing, which relate to insurance contracts undertaken with an insurer operating in Belgium, are liable to this tax (Art. 183bis CTASD).

The rate of the tax is **9.25%** (Art. 183ter CTASD)

The tax is calculated on the total amount of the sums distributed on profit sharing for the tax year (Art. 183quater CTASD).

Profit sharing schemes relating to savings insurances in connection with the pension savings scheme and concerning insurance contracts for which the insured party has not been entitled to a tax rebate (or, in the former system, to an exemption, an abatement or a deduction in respect of income taxes) are exempt from the tax under certain conditions (Art. 183quinquies CTASD).

#### **5.5. Tax on long-term savings**

The tax on long-term savings is levied on (Art. 184 CTASD) :

- individual life insurances (ordinary insurances and savings insurances) for which the insured party has been entitled to a tax rebate (or, in the former tax regime, to an exemption, an abatement or a deduction in respect of income taxes);
- collective and individual savings accounts for which the holder has been entitled to a tax rebate (or, in the former tax regime, to an exemption, an abatement or a deduction in respect of income taxes).

No tax is levied on whole-life insurance contracts and life insurances whose aim is to secure the repayment or the replenishment of a mortgaged loan (Art. 187<sup>2</sup> CTASD).

The tax is levied (Art. 184 and 186 CTASD), as the case may be, on the theoretical surrender value, the pensions, annuities, capital amounts or surrender value (life insurances) or the savings balance (savings accounts) as they have been determined on the following anniversary dates :

1. for contracts concluded or accounts opened before the age of 55 : the 60th anniversary of the insured party or of the account holder;
2. for contracts concluded as from the age of 55 years or accounts opened as from the same age : the 10th anniversary of the conclusion of the contract or the opening of the account, unless a surrender value or a savings balance is paid or granted before that date. In this latter case the tax is levied on the day of the payment or the granting.

There are three rates (Art. 185 CTASD) :

- **10%** (tax base formed from payments made as from January 1st, 1993);
- **16.5%** (tax base formed from payments made before January 1st, 1993);
- **33%** (on certain conditions for early payments or the early granting of savings balances or surrender values).

### **5.6. Bill-posting tax**

This tax is levied on all placards posted in the view of the public, as well as on illuminated signs, etc (Art. 188 and following CTASD).

A whole series of exemptions are provided, notably relating to signs and certain bills in pursuance of the law or a judicial ruling, notices put up by public authorities and certain public establishments, certain notices relating to worship, notices relating to elections, etc (Art. 194 and 198 CTASD).

The tax base is the surface area. This sometimes concerns a single right, sometimes annual rights. They vary case by case.



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## CHAPTER SIX

### CUSTOMS PROCEDURES UPON IMPORTATION, EXPORTATION AND TRANSIT

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*These procedures are mainly based on the Community Customs Code and on the decrees issued for its implementation.*

#### 6.1. Duties upon importation

Upon the importation of goods from countries outside the EU, « duties upon importation » are levied according to a scale which has been harmonized on Community level.

These duties are levied for the sole benefit of the European Union.

##### **6.1.1. Tax basis of customs duties upon importation = generally the customs value, sometimes the quantity**

The value to be declared when goods are released for free circulation, which forms the basis for levying the import duties, must comply with the requirements of Articles 28 to 36 of the Community Customs Code (Council Regulation (EEC) no 2913/92 of October 12, 1992).

These articles implement, for the Member States of the EU, the agreement on customs valuation resulting from the 1973-1979 multilateral trade negotiations in connection with the GATT. The said articles rest on the principle that the basis for the determination of the customs value of the goods must be, as much as possible, the transaction value, i.e. the price actually paid or payable for these goods, provided this price complies with certain conditions.

Failing such a transaction value or if the latter does not satisfy all the conditions required to be taken into consideration, other valuation methods must be applied, following a well-defined order.

##### Note :

*The tax basis for the VAT upon importation is the value calculated according to the applicable Community rules for the determination of the customs value, increased by additional charges up to the place of destination.*

### **6.1.2. Tariff of import duties**

The tariff of customs duty upon importation is based on the nature of the goods and on the country from which they have been imported. Based on the nomenclature of the Harmonized System, the EU tariff determines the rate applicable for each category of goods. Moreover, within the framework of international agreements or for economic reasons, a series of exemptions, suspensions, reduced tariffs (which may or may not be linked to quotas) etc. are applied. All these possibilities are listed, with the various legal and accessory provisions, in the "Applied Customs Tariff" issued by the administration.

### **6.2. Customs approved treatment**

#### **6.2.1. General**

##### A. Temporary storage

Goods which are introduced into the customs territory of the EU are, from that moment on, subject to customs supervision and must be taken to a customs office or to a place approved of by customs in order to be submitted to the latter.

In places approved of by customs the goods can be kept in temporary storage either for 45 days, if the goods were transported by sea, or for 20 days, if the goods were forwarded by another way.

##### B. Customs approved treatments

The goods must be declared for a customs-approved treatment, namely :

- the placing of the goods under a *customs procedure* (see point C below);
- their re-exportation from the customs territory of the European Union;
- their destruction;
- their abandonment to the Public Treasury;
- their entry into a free zone or a free warehouse.

##### C. Customs procedures

The term "customs procedure" is understood to mean :

- 1) the release for free circulation;
- 2) the transit;
- 3) the customs warehousing;
- 4) the inward processing;
- 5) the processing under customs control;
- 6) the temporary admission;
- 7) the outward processing;
- 8) the exportation.

The procedures referred to under items 3 to 7 are customs procedures with economic impact. The various procedures will be enlarged upon later on.

### **6.2.2. The Single Administrative Document**

The placing of the goods under a customs procedure is effected, as a rule, under cover of the single document form. The single document has been designed to cover all movements of goods (importation, exportation and transit). According to the kind of movement, different copies of a full set are used (eight copies, copies A or B for the Customs Data Processing centre (CTI), copy C for the placing in a customs warehouse, copy R for the granting of agricultural refunds).

The single document is not used if certain documents are employed especially :

- the TIR carnet (transit);
- the ATA carnet (temporary admission);
- the declaration 136F (diplomatic exemptions).

Upon customs authorization simplified procedures may be granted.

### **6.2.3. Clearance office**

The declaration is made at an office at frontier of the EU, in a seaport, at an airport, or at an office within the country, during the opening hours of this office and provided it is competent for this purpose. Customs offices within the country include also the offices which are maintained at the internal frontiers. Upon declaration at an office within the country, the goods, as soon as they enter the EU, are taken to this office under cover of a document.

The duties upon importation, the excise duty, the special excise duty and the VAT are, as a rule, paid at the office of importation when the declaration is validated.

After obtaining authorization from the Customs and Excise Administration and paying a deposit, the declarant can be granted a deferred payment for the said duties (not to be confused with the deferred payment of the VAT for which an authorization is granted by the Administration of the Taxation of Companies and of Income (Section VAT), and for which a prior payment must be made by the applicant).

### **6.2.4. Release for free circulation and for consumption**

#### **A. Principles**

Goods are released for **free circulation** in the EU when they have fulfilled the conditions relating to importation into the EU : payment of any duties upon importation and the application of trade policy measures other than tariff measures.

Goods are **released for consumption** when they have fulfilled the conditions for consumption in the country : payment of national taxes, such as VAT and excise duties, and the application of other national provisions.

As a rule, the goods are released for free circulation and for consumption simultaneously. Exemption of VAT is granted if the goods are immediately supplied to another EU country according to the rules of intra-Community trade.

However, the goods can be released only for free circulation if they are, in respect of VAT, placed under a warehousing procedure other than a customs warehouse, also called VAT warehouse (see 6.2.5.B).

With respect to excise duties there are also procedures by which the goods can be released for free circulation without the excise duties being payable.

### B. Final exemption

In about thirty cases, no import duties and possibly no other taxes are to be paid upon importation. For private citizens, this system applies to certain personal goods (in the case of removals, marriage, death,...), to the personal luggage of travellers (within certain limits), etc. For the goods traffic this relates, for example, to educational, scientific or cultural goods, to equipment imported on the occasion of a transfer of activities to the European Union, to goods which are intended for charitable institutions, etc.

The following goods, which are not of a commercial nature and are carried in the personal luggage of travellers, may be imported free of charge :

1) TRAVELLERS FROM NON-EU MEMBER STATES (1)

<u>Tobacco products (2)</u>		
	cigarettes	200 pieces
or	cigarillos	100 pieces
or	cigars	50 pieces
or	smoking tobacco	250 grams
<u>Alcohol and alcoholic beverages (2)</u>		
	non-sparkling wines	2 litres
	<u>AND</u>	
	<u>either</u> : distilled beverages and spirits of an alcoholic strength exceeding 22% vol.; not denatured ethyl alcohol of 80% vol. and over	1 litre
	<u>or</u> : distilled and alcoholic beverages, aperitifs with a wine or alcohol base, tafia, saké or similar beverages of an alcoholic strength not exceeding 22% vol.; sparkling wines, fortified wines and still wines	2 litres
<u>Perfumes</u>		
	Perfumes	50 grams
	Toilet waters	0.250 litres
<u>Coffee (3)</u>		
	Coffee	500 grams
or	Coffee extracts and essences	200 grams
<u>Tea</u>		
	Tea	100 grams
or	Tea extracts and essences	40 grams
Other goods than those mentioned above		Maximum total value : € 175 (4)

- (1) The exemptions are granted irrespective of whether the goods were purchased in these countries under the conditions of the domestic market or with refund or relief of taxes on account of their exportation (e.g.: purchases in a tax-free shop in an airport).
- (2) The exemptions for "tobacco products" and "alcohol and alcoholic beverages" are not granted to travellers under 17 years of age.
- (3) The exemptions for "coffee" or "coffee extracts" and "coffee essences" are not granted to travellers under 15 years of age.
- (4) This amount can be modified.

2) TRAVELLERS FROM A EU-MEMBER STATE

Goods acquired under domestic market conditions (all taxes paid in the country where they are bought) in a Member State of the EU : travellers coming from a EU Member state are thus allowed to import the acquired goods without restrictions as to their quantity and value.

Excise duties are still due, however, on tobacco products and alcoholic beverages imported for commercial purposes.

In order to determine whether the goods imported by the traveller are so for commercial purposes, the commercial status and the motives of the person concerned shall be taken into consideration as well as the place where the goods are located, the means of transportation used, any document related to the goods as well as the nature and quantity of the latter, following the indicative levels of the table hereafter.

Tobacco products	
cigarettes	800 pieces
cigarillos (cigars with a maximum weight of 3 g a piece)	400 pieces
cigars	200 pieces
smoking tobacco	1 kg
Alcoholic beverages	
distilled beverages	10 litres
intermediate products (e.g. Port, Pineau des Charentes)	20 litres
wine (of which maximum 60 litres sparkling wine)	90 litres
beer	110 litres

It should be noted that transfers for a valuable consideration of goods subject to excise duties between private citizens are deemed to be effected for commercial purposes even when they are made without profit.

C. Final exemption upon re-importation of goods previously exported

Under certain conditions (e.g. the unaltered state of the goods), final exemption can be granted upon re-importation of goods.

**6.2.5. Customs procedures involving suspension of duties and taxes on importation****A. Transit****a. The TIR carnet**

With the TIR carnet it is possible to cross several frontiers without customs formalities. The vehicle is sealed by the customs of the country of departure. The vehicles and containers must previously have been approved and a deposit must have been paid by the organizations acting as guarantors.

This system cannot be applied in the case of transports which begin and end in the EU.

**b. Community/common transit**

The external community transit procedure allows the movement of non-community goods from one place in the customs territory of the Community to another, without levying import duties and without applying the trade policy measures. The internal community transit procedure allows the movement of community goods from one place in the customs territory of the EU to another through a third country without the customs status being changed. The common transit system extends the Community transit procedure to include the relations with the EFTA countries (Norway, Iceland, Switzerland) and to the VISEGRAD countries (Poland, Slovakia, the Czech Republic and Hungary).

The Community/common transit is covered by a transit declaration document, usually called the T-document, composed of several copies of the Single Document. In the case of external Community transit, a T1-document is used, and for internal Community transit a T2-document is used. Except where a simplified procedure is allowed, the goods and documents must be presented both at the office of departure and at the office of destination. A security covering the whole itinerary shall be paid.

There are simplified procedures which, under certain circumstances, allow the replacement of the T-document by another document already in use. Such documents are e.g. the railway bill of lading, the airway bill, the marine bill of lading. Moreover the decisions as to whether simplified procedures are allowed can be included in conventions concluded with other countries.

### B. Customs warehouse

A **customs warehouse** is a facility where mainly non-Community goods can be stored without having to be subjected to the duties referred to in section 6.1, the VAT, the contingent excise duties and the trade policy measures.

A distinction must be made between, on the one hand, **private** bonded warehouses which are granted exclusively for the storage of goods in a customs warehouse regime by the warehouse keeper and, on the other, **public** bonded warehouses which can be used by any person for the storage of goods in that arrangement.

Among the private bonded warehouses, a distinction is made between bonded warehouses of type C, D and E, depending on the arrangements relating to the entry and clearance of goods. Control is based on the occupier's stock records. These types of arrangements can also be granted for goods that are to be stored under the customs warehousing arrangement in different EU Member States.

Among the public bonded warehouses, a distinction is made between bonded warehouses of type A, bonded warehouses of type B (especially in harbours) and bonded warehouses of type F (mainly made available by the commune). In bonded warehouses of type A, control is based on the warehouse keeper's stock records. In bonded warehouses of type B, the control is based on the entry and clearance documents; bonded warehouses of type F are managed by the customs.

Non-Community goods can also be stored in a **VAT warehouse** at the release for consumption. This makes it possible to release the goods for free circulation and to make a VAT declaration with temporary relief.

### C. Inward processing procedure

#### a. Definition

The inward processing procedure is a customs procedure with economic impact, which makes it possible to submit the following goods to processing operations performed within the customs territory of the EU, using thereby, if necessary, one or more Community goods :

- 1) non-Community goods intended for re-exportation from the customs territory of the Community in the form of processed products, without their being subjected to import duties or to commercial policy measures (system of suspension);
- 2) goods released for free circulation, whereby the import duties on those goods are paid back or remitted if the goods are re-exported from the customs territory of the Community in the form of processed products (draw-back system).



This customs procedure also applies to the cost of making when the contractor remains the owner of the imported goods.

It should be noticed that an inward processing procedure is not necessarily an industrial processing entailing an increase in value of the goods; small operations (common operations, repair, fine-tuning) can also be executed under this procedure.

*b. Purpose and scope of the procedure*

The main purpose of the inward processing procedure is to promote exportation from the customs territory of the EU by treating on the same terms Community-processors who incorporate goods from third countries in order to manufacture products to be exported and non-Community-processors who produce the same products without being subjected to customs duties. The temporary exemption from import duties (suspension system) or the refunding of the latter (draw-back system) on non-Community goods that are used in the exported processed products allow the Community-processors to produce quality products at the lowest cost, increasing their competitiveness on the foreign markets.

By promoting the exportations, the inward processing procedure contributes to improve the trade balance; anyhow, it adds an asset element to the balance, that is to say the plus-value of the used Community goods, added to the non-Community goods imported under the procedure and exported, after transformation, in the form of processed products, in addition to the labour costs linked with the processing.

Finally, the inward processing procedure is a means to fight unemployment, since it allows the preservation or the creation of jobs in the EU.

*D. Processing under customs control (pcc)*

*a. Definition*

PCC is a customs procedure with economic impact, allowing certain non-Community goods to be submitted, within the customs territory of the EU and without their being subjected to import duties or to commercial policy measures, to a number of well-defined operations altering their state or their nature, and to release the products thus processed for free circulation in the EU at the relevant rate of import duties.

*b. Purpose and scope of the procedure*

The rate of the import duties has been determined in such a way that it safeguards the interests of all the producers of Community goods (raw materials, semi-finished products and finished products).

Generally, there is a higher duty upon importation of finished products than of raw materials or semi-finished goods needed for the production of those finished products.

In certain cases, the amount of the import duties to be paid on goods to be processed within the EU with a view to obtaining a (semi-)finished product may be higher than the import duties that would be due upon direct importation from a third country of the same (semi-)finished product. Such situations encourage the relocation of processing activities outside the EU. In order to prevent those risks, the Community legislator has provided for a processing procedure under customs control, applicable to specific goods and to specific processing operations only. Taking into account the technical evolution, the list of authorized goods and operations established by the legislator can be modified when there is evidence that a certain production is insufficiently protected when the general tariff policy is applied.

The processing under customs control is thus a procedure which advantages the EU-processors, insofar as the financial burden they have to bear in order to produce the finished product is lower than the financial burden they would have borne upon direct importation and release for free circulation of the goods bought in a third country.

### E. Temporary admission

Provided they are subsequently re-exported without having undergone any transformation, certain goods used in the EU can be granted partial or total exemption from duties. An "ATA carnet" can replace the single document for the temporary admission.

### F. Flat rate outward processing

#### a. Definition

The outward processing procedure is a customs procedure with economic impact, which allows temporary exportation from the customs territory of the EU of Community goods, in order to submit them to processing operations and in order to release the thus processed goods for free circulation in the EU, under a partial or total exemption from import duties.

#### b. Purpose and scope of the procedure

The outward processing procedure complies with the present international labour organization, which entrusts a series of specialized enterprises with the manufacturing of certain goods. Although the outward processing procedure puts the Community workers at a disadvantage in comparison with foreign workers, its economic consequences are nonetheless positive for the EU. As it happens, it can lead to an increase of the exportations of Community goods intended to be incorporated in the processing of non-Community goods and re-imported in the EU, and to a decrease of the imports of non-Community goods. Furthermore, this procedure can lead to a kind of industrial co-operation with certain non-Community countries, at lower labour costs than in the EU and can, from this point of view, prevent production problems in the EU. In this case, the Community enterprises make the most of the low labour costs in developing countries by entrusting the latter with a part of their production; the savings in costs on the part of the production processed abroad have repercussions on the production costs of the production as a whole (principle of the proportionate division of costs) and prevent the production activities in the EU from being disturbed.

The outward processing procedure is also used where the EU lacks the required technology to perform part or parts of the processing operations and where the goods have to be repaired in a third country pursuant to contractual or legal obligations.

#### **6.2.6. *Exportation of goods***

The exportation procedure regulates the exportation of Community goods out of the customs territory of the EU.

Pursuant to Community provisions, an export declaration must, as a rule, be submitted at the customs office which is responsible for the control at the place where the exporter is established or where the goods are packed or loaded on the outward-bound vehicle. The exporter is the person on whose behalf the declaration is made and who is the owner of the goods or has an equivalent power or disposal.

The formalities are generally completed by means of a "single document" form, accompanied by appendices such as a copy of the invoice, possibly an export licence or an export certificate, etc.

The exportation can give entitlement to various advantages, for example exemption from excise duty and special excise duty, exemption from VAT, refund for certain agricultural products, etc.

Goods can also be temporarily exported, for example in order to be exhibited or delivered abroad on a trial basis. Providing certain conditions are met, a final exemption can be granted upon re-importation.

The "ATA carnet" can replace the "single document" for temporary exportation.

The refunds are not granted by the Customs and Excise Administration, but are effected by the Belgian Office for Intervention and Refund (BIRB) on the basis of documents which are controlled by the said Administration.

#### **6.2.7. *Refund or remission of the duties upon importation, excise duty, special excise duty and VAT***

This system applies, for example, to goods which are destroyed by an inevitable accident before they have been released to the importer, to goods refused because they are not in conformity with the purchase contract, or in all cases of regularization, etc.



## CHAPTER SEVEN EXCISE DUTIES

### *What is new ?*

- *Prolongation of certain exemptions as concerns excise duties on mineral oil.*
- *Raise of the special excise duty on unleaded high-octane petrol (98 RON or more) with a high percentage of sulphur and aromatic compounds as well as on gas oil with a high content of sulphur used as motor fuel.*
- *Increase in excise duty on heavy fuel oil with a sulphur content not exceeding 1%.*

*These taxes are laid down and regulated by various EU directives and national legislation. A number of important provisions are included in :*

- *the Law of June 10th, 1997, bearing general regulations for excise products, the holding, the movement, and the control thereof, amended by the Law of May 4th, 1999 bearing regulations relating to excise duties (BOJ of August 1st, 1997 and May 29th, 1999);*
- *the Law of October 22nd, 1997, relating to the structure and excise tariffs of mineral oils, amended by the Law of May 4th, 1999, by the Royal Decree of January 10th, 2001, the Law of March 23rd, 2001, the Royal Decrees of October 29th, 2001 and December 21st, 2001 and by the Law of June, 26th, 2002 (BOJ of November 20th, 1997, May 29th, 1999, January 20th, 2001, May 24th, 2001, November 1st, 2001, December 29th, 2001 and July 20th, 2002);*
- *the Law of January 7, 1998, relating to the structure and excise tariffs on alcohol and alcoholic beverages (BOJ of February 4th, 1998);*
- *the Law of April 3rd, 1997, relating to the fiscal regime of manufactured tobacco, amended by the Royal Decrees of October 21st, 1997 and June 19th, 1998 confirmed by the Law of May 4th, 1999 bearing regulations relating to excise duties and amended by the Royal Decree of April 26th, 2000 (BOJ of May 16th, 1997, October 31st, 1997, July 3rd, 1998, May 29th, 1999 and April 29th, 2000);*
- *the Law of February 13th, 1995 relating to the excise system for non-alcoholic beverages and the Royal Decree of October, 28th, 1996, relating to the excise system on non-alcoholic beverages (BOJ of March 11th, 1995 and November 1st, 1996);*
- *the Law of February 13th, 1995, relating to the excise system of coffee (BOJ of March 11th, 1995) ;*

*and the decrees issued for the implementation of these laws.*

### **7.1. Definition**

Excise duties are indirect taxes which are payable for the consumption or use of certain products, whether they are manufactured within the country, originated from a Member State of the Union or imported from a country outside the Union. A distinction is made between (ordinary) excise duties and special excise duties. The total excise duty is the sum of these two categories.

### **7.2. Classification of excise duties**

A distinction is made between :

- a. excise products harmonized at Community level, on which ordinary excise duties are levied which are common to Belgium and Luxemburg, and special excise duties levied at the sole benefit of Belgium ; the said Community excise products are mineral oils, manufactured tobacco, alcohol and alcoholic beverages including beer, wine, other fermented beverages than beer and wine, intermediate products and ethyl alcohol;
- b. national excise products, which are not harmonized at Community level and on which ordinary excise duties are levied at the sole benefit of Belgium : these autonomous excise products are the non-alcoholic beverages and coffee.

For **mineral oils, alcohol and alcoholic beverages, as well as manufactured tobacco**, a European directive is in force concerning the general regulations for these excise products, the possession, circulation and control thereof (the so-called horizontal directive). On the other hand, there are directives relating to the structures and rates of excise duties which apply to these products.

For **non-alcoholic beverages and coffee** special arrangements apply which take into account the provisions contained in the said horizontal directive.

### 7.3. Tax base

Depending on the product, quantity and/or value. See also the section "rates" below.

### 7.4. General rules governing the production, processing, holding and movement of excise goods

The levy of the tax on excise goods is regulated at EU level by Directive 92/12/EEC of February 25th, 1992, which is translated in the Belgian legislation by the Law of June 10th, 1997, *bearing general regulations for excise products, the holding, the movement, and the control thereof*.

It is impossible to give here a precise description of this complex regulation. Only the broad lines are set forth; for details and exceptions the reader is referred to the above-mentioned Law and the decrees issued to its implementation.

The products **mineral oils, alcohol and alcoholic beverages, as well as manufactured tobacco** are subjected to excise duty upon their production (wherever in the EU) or upon importation (from countries which are not Members of the EU).

The excise duty is *payable* upon release for consumption, i.e. upon removal from a suspension arrangement, upon manufacture without a suspension arrangement or upon importation which does not involve a suspension arrangement. Excise duty is also due where the absence or deficiency of goods on which excise duties are chargeable comes to the notice of the excise administration. With respect to manufactured tobacco, the excise duty is payable upon the purchase of tax bands. A *suspension arrangement* is a tax arrangement applied to the production, processing, holding and movement of products, and which involves a suspension of excise duties.

Excise duty is in principle also due on excise products released for consumption in another Member State and supplied or intended for supply or for domestic retail transactions in Belgium. In order to avoid double taxation, a refund procedure has been provided for.

As a rule, a cash payment is required at the time the tax debt arises. Provided certain conditions are met and a security is given, terms of payment may be granted which vary according to the product.

#### **7.4.1. The production, processing and holding of excise goods**

The excise duty is *not* due where the production, processing and holding of excise goods occur in a fiscal warehouse. A *fiscal warehouse* is any place where goods subject to excise duty are produced, processed, held, received or dispatched under *duty-suspension* arrangements by an *authorized warehouse-keeper* (a natural or legal person) in the course of his business, subject to the conditions laid down by the Minister of Finance (authorization, securities, administrative obligations, consenting to inspection, etc.).

The excise duty is payable upon release for consumption (see above).

#### **7.4.2. Movement of excise goods**

As a rule the movement of excise goods taking place under the suspension arrangement must occur between fiscal warehouses.

Under certain conditions, however, the consignee may also be a firm which is not an authorized warehouse-keeper. That firm can be a *registered* or a *non-registered* trader. Both categories are not authorized warehouse-keepers, but they may receive - though not hold or dispatch - products subject to excise duty from another Member State of the EU under duty-suspension arrangements.

A *registered firm* is authorized to receive *permanently*, in the course of its business, excise goods under duty-suspension arrangements. A *non-registered firm* is authorized to receive *occasionally*, in the course of its business, excise goods under excise duty-suspension arrangements.

A *registered firm* must guarantee the payment of the excise duty to the collector (civil servant), keep accounts of the deliveries, submit the goods upon request, and consent to the necessary checks. For this firm the excise duty is payable when the goods are entered for consumption, i.e. not later than the Thursday of the week following the reception of the goods.

A *non-registered firm* must make a declaration *before the dispatch* of the goods and guarantee the payment of the excise duty, which is to be paid upon *receipt*. It must also consent to any check with respect to the actual receipt of the goods and the payment of the excise duty.

If appropriate, an authorized warehouse-keeper of dispatch may also appoint a tax representative who will give the necessary guarantees for the payment of the excise duty in lieu of the consignee.

The movement of excise goods between the territories of various Member States of the EU must be made under cover of an accompanying document, the form and content of which are established by an EC Directive and whose aim is i.a. to keep the administration informed.

Where excise goods which are placed under the duty-suspension arrangement are *exported* (i.e. to a country which is not a Member State of the EU), this arrangement is discharged by an attestation drawn up by the customs office of departure from the EU, confirming that the products have indeed left the EU.

As regards excise goods acquired by *private individuals for their own use* and transported by them, no excise duty is charged provided the latter was levied in the Member State in which they were acquired.

There are, however, certain rules (ia concerning the quantity of excise goods transported by the person concerned himself - see Chapter 6, point 6.2.4.B : exemptions for private individuals) to establish whether or not the goods are used for commercial purposes. Concerning mineral oils, the excise duty is due if these products are transported using atypical modes of transport (for example fuels other than in the tanks of vehicles or in appropriate reserve fuel canisters, liquid heating products other than by means of tankers used on behalf of professional traders).

For the products **non-alcoholic beverages and coffee** a national arrangement is applicable which, whenever possible, is parallel to the Community arrangement. For example, the manufacture, processing and storing of these goods under excise-duty suspension arrangements must take place in a tax warehouse. The dispatch between fiscal warehouses within the country occurs with an accompanying document. The dispatch of non-alcoholic beverages and coffee to and from a Member State is effected with the usual commercial documents.

### 7.5. Inspection

Inspections in fiscal warehouses are carried out on the basis of the stock records related to the authorized warehouse-keeper's accounts and on the basis of verifications of the registers, documents and declarations (administrative covering document, declarations for release for consumption, declarations for export, etc.).



Moreover, a physical control and stock taking shall be carried out at least once a year in the fiscal warehouses.

In certain cases the excise agents carry out a permanent inspection of the production.

When excise products are dispatched or transported, the control is carried out on the basis of the documents covering the transport (e.g. in the case of transportation under a suspension procedure : the administrative covering document; in the case of transportation with payment of the excise duties : according to the case, the simplified covering document and the security or the commercial documents and the security).

It should be noticed that a tax label has to be applied to manufactured tobacco released for domestic consumption.

It is obvious that the control of the documents can go together with a physical control of the transported goods.

Excise goods released for consumption in Belgium and which, while being taken to another place in Belgium, cross the territory of another Member State, can only be transported under cover of a simplified transfer document.

Inversely, the same transfer document is needed for intra-Community transportation of goods released for consumption in another Member State and which, while being taken to another place in that Member State, cross the Belgian territory.

## 7.6. Rates

### 7.6.1. Mineral oils

per 1,000 litres at 15 degrees C

(per 1,000 kg for heavy fuel oils, liquefied petroleum gas and methane) (1)

in €

	Excise duty	Special excise duty	Total
Leaded petrol	294.9933	256.8177	551.8110
Unleaded petrol	245.4146	248.1414 (6)	493.5560 (6)
Kerosene			
- used as motor fuel	294.9933	256.8177	551.8110
- for industrial and commercial applications (2)	18.5920	0	18.5920
- for heating purposes	0	0	0
Gas oils			
- used as motor fuel (3)	198.3148	91.7206 (7)	290.0354 (7)
- for industrial and commercial applications (2)	18.5920	0	18.5920
- heating oil for domestic use (4)	0	0	0
Heavy fuel oil			
- with not more than 1% sulphur (5)	6.5000	0	6.5000
- with more than 1% sulphur	18.5920	0	18.5920
Liquid petroleum gas and methane			
- used as motor fuel	0	0	0
- for industrial and commercial applications (2)	37.1840	0	37.1840
- for heating purposes	0	0	0

- (1) Certain mineral oils are also liable to the levy on energy (see Chapter 8 hereafter) and/or to the inspection fee (see 7.6.6.).
- (2) We are concerned here with the following products used under fiscal control : kerosene, gas oil, liquefied petroleum gas and methane for the feeding of stationary engines, of engines fitted on equipment and machines used in construction, road construction, hydraulic engineering and public works, and of engines fitted on vehicles which, on account of their intended use, are not driven on the public highway or for which no authorization has been granted to be used mainly on the public highway.
- (3) An exemption of the special excise duty of € 49.5787 per 1,000 litres at 15 degrees C is provided for gas oil used as motor fuel and intended for the needs of the regional public transport companies. This exemption only applies until December 31st, 2003.
- (4) Heating oil for domestic use is, however, liable to an inspection fee of € 5 per 1,000 litres at 15 degrees C (see 7.6.6.).
- (5) Exempted from excise duty and special excise duty till December 31st, 2002, provided it is used under customs control and exclusively for agricultural, horticultural or forestal activities, or for fresh water fish-breeding.
- (6) € 263.0150 special excise duty and € 508.4296 total excise duty per 1,000 litres at 15 degrees Celsius as regards unleaded high-octane petrol (98 RON or more of CN Code 2710 00 32) referred to in art. 1 of the Royal Decree of October 29th, 2001 amending the Law of October 22nd 1997 relating to the structure and excise tariffs of mineral oils.
- (7) € 106.5942 special excise duty and € 304.9090 total excise duty per 1,000 litres at 15 degrees Celsius as regards gas oil of CN Code 2710 00 69 referred to in art. 2 of the Royal Decree of October 29th, 2001 amending the Law of October 22nd 1997 relating to the structure and excise tariffs of mineral oils.

Mineral oils (for a definition, see art. 3, Law of October 22nd, 1997 relating to the structure and tariffs of mineral oils) for which no specific rate is mentioned in the above table, are subject to excise duty when they are intended for consumption, put up for sale or used as heating fuel or motor fuel. The applicable rate will be determined, in function of the intended use, by the equivalent heating fuel or motor fuel.

Furthermore, each product, with the exception of natural gas, will be taxed as motor fuel when it is intended for consumption, put up for sale or used either as motor fuel or as an additive or as a filler in motor fuel. Likewise, all other hydrocarbons, with the exception of coal, brown coal, peat and other similar solid hydrocarbons as well as natural gas, intended for consumption, put up for sale or used for heating purposes, are taxed according to the tariff applicable for the equivalent mineral oil.

There are exemptions (unless otherwise stipulated) for :

- a. mineral oils which are used for other purposes than as engine fuel or as heating fuel;
- b. mineral oils to be used as fuel for aircraft, including private pleasure aircraft (for the latter, the exemption is restricted to the period ending on December 31st, 2003);
- c. mineral oils to be used as fuel for navigation in Community water, including fishing (for private craft : only for gas oil and only till December 31st, 2003).
- d. mineral oils injected in blast furnaces in addition to coke used as the main fuel, with a view to chemical reduction.

There are also exemptions for mineral oils used under fiscal control (unless otherwise stipulated) for :

- a. pilot projects for the technological development of environment-friendly products (inter alia those relating to fuels from renewable sources) ;
- b. the construction, development, testing and maintenance of aircraft and ships ;
- c. inland shipping, including pleasure craft;
- d. the carriage of passengers and goods by rail;
- e. exclusively agricultural, horticultural and forestal activities, and fresh water fish-breeding;
- f. dredging in navigable watercourses and in harbours.
- g. heating, where it concerns waste oil which is reused, either straight after recovery or after recycling, when the reuse is subjected to the levy of taxes (exemption restricted to December 31st, 2003).

For points c through f, the exemption is restricted to supplies of gas oil and kerosene.

Under certain conditions, mineral oils released for consumption in another Member State are now exempt of excise duty in Belgium when they are contained in standard tanks of commercial motor vehicles in view to be used as fuel thereof, or in containers for special purposes intended for the functioning, during the transport, of specific systems making part of these containers.

In order to prevent the use of exempt oils as engine fuel, they are denatured or an amount of not less than 6 grams of Solvent Yellow 124 is added per 1,000 litres of mineral oils. Moreover, in order to identify exempt gas oil a red colorant is added.

### 7.6.2. Alcoholic beverages

#### A. Beer

Beer shall be taken to include any product listed under code 2203 of the combined nomenclature of the common customs tariff of the European Communities (abbreviated as CN Code, see annex to this chapter), as well as mixtures of beer and non-alcoholic beverages of CN Code 2206. The alcoholic strength by volume must exceed 0.5 %.

Per hectolitre-degree Plato of the end product :

	Excise duty	Special excise duty	Total
Beer	0.7933	0.9172	1.7105

in €

The *number of degrees Plato* measures the percentage in weight of the original extract per 100 grams of beer, this value being calculated from the actual extract and the alcohol contained in the finished product.

The total excise duty on 1 litre of pilsner beer, with a density of 12.5 Plato degrees (in this case rounded to 12 degrees Plato) amounts to :

$$12 \times \text{€ } 1.7105 / 100 = \text{€ } 0.20526.$$

For beer produced by small independent breweries there is a reduced rate, the application of which depends on the production of the brewery concerned during the previous year. These reduced rates are as follows :

Per hectolitre/degree Plato of the end product :

Yearly production	Excise duty	Special excise duty	Total
not exceeding 12,500 hl	0.3966	1.0907	1.4873
not exceeding 25,000 hl	0.3966	1.1403	1.5369
not exceeding 50,000 hl	0.3966	1.1899	1.5865
not exceeding 75,000 hl	0.4462	1.1899	1.6361
not exceeding 200,000 hl	0.4462	1.2395	1.6857

in €

#### B. Wine

A distinction is made between non-sparkling and sparkling wines.

*Non-sparkling wines* (so-called still wines) shall be taken to include all products of CN Codes 2204 and 2205 (see annex to this chapter) except sparkling wines mentioned hereafter. They must have either an actual alcoholic strength by volume of more than 1.2% but not more than 15%, where the alcohol in the end product is obtained entirely through fermentation, or an actual alcoholic strength by volume of more than 15% but not more than 18%, where the alcohol in the end product is obtained entirely through fermentation and, **in addition**, the wines are produced without any enrichment.

*Sparkling wines* (or semi-sparkling wines) shall be taken to include all products of CN Codes 2204 10, 2204 21 10, 2204 29 10 and 2205 (see annex to this chapter). They are presented in bottles with a mushroom-shaped cork which is confined by threads, strips or otherwise, or have an excess pressure of not less than 3 bars produced by carbon dioxide in solution. They must have an actual alcoholic strength by volume of more than 1.2 % but not exceeding 15 %, and the alcohol in the end product must be obtained entirely through fermentation.

Per hectolitre of the end product :

	Excise duty (1)	Special excise duty (1)	Total
non sparkling wines	0	47.0998	47.0998
sparkling wines	0	161.1308	161.1308

in €

- (1) € 0 excise duty and € 14.8736 special excise duty for any kind of non-sparkling or sparkling wines of an actual alcoholic strength by volume of more than 1.2% and not more than 8.5% vol.

Examples :

- The total excise duty for a 0.7 litre bottle of grape wine of an alcoholic strength of 12% vol. is 0.7 x € 47.0998 / 100 = € 0.3296986
- The total excise duty for a 0.7 litre bottle of champagne of an alcoholic strength of 11% vol. is 0.7 x € 161.1308 / 100 = € 1.1279156

C. Fermented beverages other than wine or beer

A distinction is made between "other non-sparkling fermented beverages" and "other sparkling fermented beverages".

*Other non-sparkling fermented beverages* shall be taken to include all the products, not listed under A or B above, of CN Codes 2204, 2205 and 2206 (see annex to this chapter) which are not classified under "other sparkling fermented beverages". They must have either an actual alcoholic strength by volume of more than 1.2 % but not exceeding 10 %, or an actual alcoholic strength by volume of more than 10 % but not exceeding 15 %, and, **in addition**, the alcohol in the end product being obtained entirely through fermentation.

*Other sparkling fermented beverages* shall be taken to include all products of CN Codes 2206 00 91 as well as the products of CN Codes 2204 10, 2204 21 10, 2204 29 10 and 2205 which are not listed under B (see annex to this chapter). They are presented in bottles having a mushroom-shaped cork confined by threads, strips or otherwise, or having an excess pressure of not less than 3 bars produced by carbon dioxide in solution. They must have either an actual alcoholic strength by volume of more than 1.2% but not exceeding 13%, or an actual alcoholic strength by volume of more than 13% but not exceeding 15%, the latter the alcohol in the end product being obtained entirely through fermentation.

## INDIRECT TAXATION

Per hectolitre of the end product :

in €

	Excise duty (1)	Special excise duty (1)	Total
Non-sparkling	0	47.0998	47.0998
Sparkling	0	161.1308	161.1308

(1) € 0 excise duty and € 14.8736 special excise duty for any kind of other (non-sparkling or sparkling) fermented beverage of an actual alcoholic strength by volume of more than 1.2% and not more than 8.5% vol.

### Examples

- the total excise duty for a 0.7 litre bottle of non-sparkling perry of an alcoholic strength of 9% vol. is  $0.7 \times € 47.0998 / 100 = € 0.3296986$
- the total excise duty for a 0.7 litre bottle of sparkling cider of an alcoholic strength of 9% vol. is  $0.7 \times € 161.1308 / 100 = € 1.1279156$

### D. Intermediate products

*Intermediate products* shall be taken to include all products of CN Codes 2204, 2205 and 2206 (see annex to this chapter) which do not come under A, B, or C above and have an actual alcoholic strength by volume of more than 1.2% but not exceeding 22 %.

Per hectolitre of end product :

in €

	Excise duty	Special excise duty	Total
« non-sparkling » intermediate products			
a) alcoholic strength exceeding 15% by volume	66.9313	32.2262	99.1575
b) alcoholic strength not exceeding 15% by volume	47.0998	27.2683	74.3681
« sparkling » intermediate products (1)			
a) alcoholic strength exceeding 15% by volume	66.9313	94.1995	161.1308
b) alcoholic strength not exceeding 15% by volume	47.0998	114.0310	161.1308

(1) in particular : if contained in bottles with a mushroom-shaped cork which is confined by threads, strips or otherwise, or have an excess pressure of not less than 3 bars produced by carbon dioxide in solution.

### Example :

*The total excise duty for a 0.75 litre bottle of vermouth of an alcoholic strength of 17% vol. =  $0.75 \times € 99.1575 / 100 = € 0.74368125$*

### E. Ethyl alcohol

*Ethyl alcohol* shall be taken to include :

- a. all products of the CN Codes 2207 and 2208 (see annex to this chapter). They must have an actual alcoholic strength exceeding 1.2% by volume. They are also taxed if they are part of another product listed in another chapter of the CN codes;
- b. products of the CN Codes 2204, 2205 and 2206 of an actual alcoholic strength of more than 22% by volume;

c. distilled beverages whether or not containing products in solution.

Per hectolitre of absolute alcohol at a temperature of 20 °C :

	Excise duty	Special excise duty	Total
Ethyl alcohol	223.1042	1,437.7824	1,660.8866

in €

*Example :* The total excise duty on a 70 cl bottle of whisky of an actual alcoholic strength of 40% by volume amounts to :  
 $€ 1,660.8866 \times 0.4 \times 0.007 = € 4.65048248$

### F. Exemptions

In certain cases the products listed above are exempt from the excise duty and special excise duty : i.a. if they are entirely denatured or if they are used for the production of vinegar (CN Code 2209, see annex to this chapter) or medicinal products, or as flavouring for the preparation of certain foodstuffs and non-alcoholic beverages (on certain conditions).

#### **7.6.3. Manufactured tobacco**

For manufactured products of tobacco, the excise duty and special excise duty are expressed as a percentage of the retail price (i.e. inclusive all taxes – *ad valorem* excise duty and *ad valorem* special excise duty) ; cigarettes are furthermore compulsorily subjected to a specific excise duty and to a specific special excise duty per 1,000 pieces.

	Excise duty	Special excise duty	Total
Cigars and cigarillos	5.00 %	0.00 %	5.00 %
Cigarettes (1) (2)	45.84 %	0.00 %	45.84 %
Smoking tobacco (2)	31.50 %	6.05 %	37.55 %

(1) Cigarettes are, in addition, subjected to a specific excise duty of € 6.8914 per 1,000 pieces and a specific special excise duty of € 8.8250 per 1,000 pieces.

(2) For cigarettes, the aggregate amount of excise duty, special excise duty (both specific and *ad valorem*) and VAT shall in no case be less than 90% of the aggregate amount of the same taxes applicable to the pack of cigarettes for which there is the greatest demand (e.g. for the pack of cigarettes for which there is the greatest demand in 2001, sold at the price of € 3.62, the total amount of taxes is € 2.6806, which means that a pack of cigarettes of 25 pieces cannot be taxed less than € 2.4125. That amount applies to packs of 25 cigarettes and must be adjusted for other quantities).

For smoking tobacco finely cut for rolling cigarettes and other kinds of smoking tobacco, the aggregate amount of excise duty, special excise duty and VAT shall in no case be less than 85% of the aggregate amount of the same taxes applicable to the pack of tobacco for which there is the greatest demand (e.g. for the pack of smoking tobacco of 50 g for which there is the greatest demand in 2001, sold at the price of € 3.05, the total amount of taxes is € 1.6746, which means that a pack of tobacco cannot be taxed less than € 1.4234 per 50 g. That amount applies to packs of 50 g and must be adjusted for other quantities).

For smoking tobacco assigned by tobacco planters to their own consumption, limited to 150 plants per year, the excise duty shall be computed as being 20% of the retail price of smoking tobacco in the best-selling price class category.

In certain cases (for example denaturing for use in industrial or horticultural applications, for scientific experimentations, re-treatment or reprocessing by the producer), there is under certain circumstances an exemption from excise duty and special excise duty.

<i>Example</i>
<i>On October 1st, 2002, a pack of 25 pieces of cigarettes costs € 3.80. The VAT amounts to 21%/1.21 = 17.355% of the retail price inclusive VAT. (VAT rates are expressed as a percentage of the price exclusive VAT). This corresponds to an amount of € 0.6595. The total ad valorem excise duty amounts to 45.84% of the retail price, corresponding to an amount of € 1.7419. The sum of specific excise duty and specific special excise duty amount to € 15.7164 per 1,000 pieces, corresponding to an amount of € 15.7164 x 25 / 1,000 = € 0.3929 per 25 pieces (€ 0.1723 of specific excise duty and € 0.2206 of specific special excise duty).</i>

#### **7.6.4. Non-alcoholic beverages**

Per hectolitre :

in €

	Excise duty	Special excise duty	Total
Mineral water and assimilated products (1)	4.9579	-	4.9579
Soft drinks or lemonade and other non-alcoholic beverages	7.4368	-	7.4368

(1) in particular : natural mineral water, spring water, water for consumption whether carbonated or not and any water tapped in bottles or otherwise packed in order to be sold or supplied as drinking-water.

The above-mentioned rate of € 7.4368 per hectolitre for lemonade also applies to the following beverages :

1. beers such as defined sub 7.6.2.A, where the alcoholic strength by volume does not exceed 0.5% vol. ;
2. non-sparkling wines such as defined sub 7.6.2.B, where the alcoholic strength by volume does not exceed 1.2% vol., provided the alcohol is obtained entirely through fermentation ;
3. sparkling wines such as defined sub 7.6.2.B, where the alcoholic strength by volume does not exceed 1.2% vol., and where
  - they are put up for sale in bottles having a mushroom-shaped cork confined by threads or strips, or having an excess pressure of not less than 3 bars, produced by carbon dioxide in solution ;
  - the alcohol is obtained entirely through fermentation ;
4. other non-sparkling fermented beverages such as defined sub 7.6.2.C, where the actual alcoholic strength by volume does not exceed 1.2% vol. and where the alcohol is obtained entirely through fermentation ;



5. other sparkling fermented beverages such as defined sub 7.6.2.C, where the actual alcoholic strength by volume does not exceed 1.2% vol. and where
- they are put up for sale in bottles having a mushroom-shaped cork confined by threads or strips, or having an excess pressure of not less than 3 bars, produced by carbon dioxide in solution ;
  - the alcohol is obtained entirely through fermentation.

The storing in a fiscal warehouse and the dispatching to another fiscal warehouse occur with suspension of excise duty. In certain cases an exemption from excise duty is granted, for example when the products are sent to another EU country, exported to third countries, or when they are supplied under a convention of diplomatic exemptions.

#### **7.6.5. Coffee**

Per kilogram of net weight (for coffee extracts : per kilogram of dry extract) :

in €

	Excise duty	Special excise duty	Total
non-roasted coffee	0.1983	-	0.1983
roasted coffee	0.2479	-	0.2479
coffee extracts, liquid or solid	0.6941	-	0.6941

The storing in a fiscal warehouse and the dispatching to another fiscal warehouse occur with suspension of excise duty.

In certain cases an exemption from excise duty is granted, for example when the products are sent to another EU country or exported to third countries, when they are supplied under a convention of diplomatic exemptions and also when they serve for other industrial uses than the roasting of coffee or the production of coffee extracts.

#### **7.6.6. Inspection fee on domestic fuel oil**

Article 5, 3°, of Council Directive 92/82 of October 19th, 1992 sets the minimum rate of excise duty on domestic fuel oil at 18 Ecus per 1,000 litres. Since Belgium did not apply any excise duty on domestic fuel oil on January 1st, 1991, it was authorized to apply a zero rate, provided a monitoring fee of 5 Ecus per 1,000 litres be levied as of January 1st, 1993.

Art. 7 §2 of the Law of October 22nd, 1997 relating to the structure and the rates of excise duties on mineral oil thus prescribes the levying of a monitoring fee of € 5 per 1,000 litres at 15° C on domestic fuel oil.

The conditions for the levying and control of that fee are identical to those laid down for excise duty on mineral oils.



## ANNEX TO CHAPTER 7

## Codes of the combined nomenclature (CN) of the common customs tariff of the European Communities for alcoholic beverages

<u>CN Code</u>	<u>Description</u>
2203	beer made from malt
2204	wines from fresh grapes, including wines with added alcohol; grape must, other than referred to in heading 2009  including:
2204 10	sparkling wines (for example champagne)
2204 21 10	wines, other than those referred to in subheading 2204 10, packed in bottles closed by means of a mushroom-shaped cork which is confined by threads, strips or otherwise; otherwise packed wines having, at 20° C, an excess pressure of at least 1 but not more than 3 bars, produced by carbon dioxide in solution - in packages containing not more than 2 litres
2204 29 10	as 2204 21 10, but in larger packaging
2205	vermouths and other wines of fresh grapes, prepared with aromatic plants or flavoured with aromatic extracts
2206	other fermented beverages (for example, cider, perry, mead), mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, neither named elsewhere nor included elsewhere  including
2206 00 91	sparkling beverages
2207	ethyl alcohol, undenatured, of a strength of 80% by volume or higher; ethyl alcohol and distilled beverages, denatured, whatever the strength
2208	ethyl alcohol, undenatured, of an alcoholic strength by volume of less than 80%; distilled beverages, liqueurs and other beverages containing distilled alcohol
2209	vinegar, natural or obtained from acetic acid



## CHAPTER EIGHT THE LEVY ON ENERGY

*This levy is laid down and regulated by the Law of July 22nd, 1993, instituting a levy on the energy in order to safeguard the competitive power and employment, as well as by the decrees issued for its implementation.*

### 8.1. Definition

The levy on energy is an indirect tax levied on the release for consumption or the use in this country of motor fuels, fossil fuels for heating and electric energy, irrespective of their origin (Art. 1 of the said Law).

### 8.2. Products subject to the levy and rates to be applied

The philosophy of this levy is the preservation of a neutral treatment between the various energy sectors, at least with respect to fuels. The rate of the levy is calculated according to the principle of equal taxation per energy unit in proportion to the calorific value in relation to the taxation level for heating oil.

The products subject to the levy and the rates to be applied are as follows (Art. 2) :

#### 8.2.1. Motor fuels

Product	Unit	Rate
Leaded and unleaded petrol	1,000 l (1)	13.6341
Kerosene used as motor fuel	1,000 l (1)	13.6341
Gas-oil used as motor fuel		0
Liquid petroleum gas used as motor fuel		0
Others		0

(1) at 15° C

**8.2.2. Fuels for heating purposes**

in €

Product	Unit	Rate
Heating gas-oil for domestic use	1,000 l (2)	8.4284
Paraffin oil used for heating purposes	1,000 l (2)	12.8905
Heavy fuel oil		0
Natural gas		
- tariffs for domestic and thereto assimilated use (1)	1 MWh	1.2199
- tariffs for non-domestic uses (ND1 and ND2) and tariffs for Associated Authorities (1)	1 MWh	1.2199
- tariffs for non-domestic use (ND3) (1)		0
Liquid petroleum gas		
- butane	1,000 kg	17.1047
- propane	1,000 kg	17.3525
Coal		0
Others		0

(1) Tariffs classes recommended by the Committee for the Supervision of Electricity and Gas.

(2) at 15°C.

**8.2.3. Electricity**

in €

Product	Unit	Rate
Low voltage tariff	1 MWh	1.3634
High voltage tariff		0

**8.3. Liability for payment**

The payment of the levy is due (Art.4) :

- upon the release for consumption in this country according to the rules in respect of excise duties : for motor fuels and fuels for heating purposes, except natural gas, coal and the « other » (see above 8.2.2.) fuels for heating purposes;
- as a rule, upon the delivery to the user (sometimes when accounts are rendered or upon payment) : for the other products subject to the levy, on account of the distributor or retailer.

#### **8.4. Exemptions**

The following are exempted from the levy on energy (Art.7) :

- paraffin oil, heating oil and liquid petroleum gas destined for certain industrial and commercial applications in the cases provided for by the legislation relating to the excise duty on mineral oils;
- all the products subject to the levy on energy pursuant to Article 2 of the law and which are used for the purposes and under the conditions for which the exemption of excise duty is granted pursuant to the legislation relating to the excise duty on mineral oils;
- the specific social tariffs applied in the sector for the distribution of natural gas and electricity.

#### **8.5. Inspection**

The inspection is carried out on the basis of the general Customs and Excise law and the specific legislation concerning excise duties (Art. 9).





## CHAPTER NINE ECOTAXES

### *What is new ?*

- *Extension of certain tax exemptions in respect of drink containers and batteries.*

*Ecotaxes are the object of art. 91-93 and 95, §4 of the special law of July 16th, 1993 aimed at finalising the federal structure of the State (BOJ of July 20th, 1993) and of Book III (articles 369-401) of the ordinary law of July 16th, 1993 aimed at finalising the federal structures of the State (BOJ of July 20th, 1993), amended by the law of June 3rd, 1994 (BOJ of June 16th, 1994), the law of February 9th, 1995 (BOJ of March 3rd, 1995), the law of April 4th, 1995 holding fiscal and financial provisions (BOJ of May 23rd, 1995), the law of March 7th, 1996 (BOJ March 30th 1996), the law of July 14th, 1997 (BOJ of November 22nd, 1997), the law of November 10th, 1997 (BOJ of November 22nd, 1997) and the laws of June 26th, 2002 (BOJ of July 5th, 2002 and July 20th, 2002).*

### 9.1. Generalities

Ecotaxes are assimilated to excise duties and are levied on certain products upon their release for consumption because these products are considered environmentally hazardous.

"Release for consumption" shall be construed as : supply to retailers of products subject to ecotaxes by companies liable to registration according to stipulations laid down by the Minister of Finance, except where the manufacturer, the importer, the intra-Community acquirer or his fiscal representative have already satisfied, at a previous level of the distribution chain, the liabilities laid down on those companies.

Is considered a "retailer", any natural or legal person who supplies products liable to ecotaxes to natural or legal persons who consume them, whether it be a final or an intermediate consumption.

The groups of products which are, as a rule, liable to ecotaxes are <sup>(87)</sup> : drink containers (including those containing liquid milk, but excluding those containing dairy products); disposable cameras; batteries; packages of a certain number of inks, glues, solvents and pesticides for professional use (industrial products); some pesticides and a certain number of products made of paper and/or cardboard.

<sup>87</sup> For a detailed list of products liable to ecotaxes, see the law of July 16th, 1993 (BOJ of July 20th, 1993), amended by the law of June 3rd, 1994 (BOJ of June 16th, 1994), the law of February 9th, 1995, (BOJ of March 3rd, 1995), the law of April 4th, 1995 (BOJ of May 23rd, 1995), the law of March 7th, 1996 (BOJ March 30th, 1996), the law of July 14th, 1997 (BOJ November 22nd, 1997), the law of November 10th, 1997 (BOJ November 22nd, 1997) and the laws of June 26th, 2002 (BOJ of July 5th, 2002 and July 20th, 2002).

## 9.2. Rates and exemptions

### 9.2.1. Drink containers

Rate : As a rule, all drink containers are liable to an ecotax of € 0.3718 per container, regardless of their contents, their capacity and the material they are made of.

Exemptions :

- 1) containers which are mainly made of wood, earthenware, chinaware or flint glass are exempt from the ecotax;
- 2) re-usable containers are exempt where evidence is provided as to the fulfilment of the following conditions :
  - they must be re-usable;
  - they must be collected by means of a deposit refund system (minimum of € 0.17 for containers of more than 50 centilitres and € 0.09 for containers of up to 50 centilitres inclusive);
  - they must actually be re-used;
  - they must bear a distinguishing mark indicating that they are returnable and refillable.
- 3) re-cyclable containers will be exempt during a transitional period running till the end of the year 2000, provided the following re-cycling rates are met :

	1996	1997	1998	1999	2000 and afterwards
Glass	55	62	67	73	80
Metals	40	47.5	58	64	80
Synthetic materials	20	30	43	56	70
Drink containers	20	30	43	56	70

**9.2.2. Disposable cameras**

Rate : € 7.4368 € apiece

Exemption : on the condition that 80% of the weight of the cameras collected through photographic labs is re-used or re-cycled.

**9.2.3. Batteries**

Rate : unless they are used in appliances mentioned in annex 1 to this chapter, batteries are liable to an ecotax of € 0.4958 apiece.

Exemptions : - where the batteries are subject to a deposit-refund system of at least € 0.24 apiece and a written proof is delivered to the purchaser that the batteries were supplied in Belgium;

- or where an organized collection and recycling system is set up allowing the collection of the following quantities (proportionally to the total weight of the batteries put on the Belgian market in that year) :

1996 : 40%

1997 : 50%

1998 : 60%

1999 : 67.5%

2000 and afterwards: 75%

and provided the collected batteries are processed in a way that is both ecologically justified and economically feasible.

These exemptions do not apply to batteries containing mercury oxide.

#### 9.2.4. Packages of certain types of inks, glues, solvents and pesticides for professional use

These packages are taxable where :

- the products they contain are listed in annex 2 to this chapter;
- AND their capacity exceeds :
  - for industrial solvents : 5 litres ;
  - for industrial glues : 10 litres ;
  - for industrial inks : 2.5 litres ;
  - for Class B pesticides for non-agricultural use and Class C pesticides :
    - when concentrated : 0.5 litre
    - when diluted : 5 litres <sup>(88)</sup>
- Class A pesticides for agricultural use and Class A and B pesticides for non-agricultural use stay liable to ecotaxes.

Rates : for the packaging of the products concerned :

- solvents : € 0.6197 for every commenced quantity of 5 litres;
- glues : € 0.6197 for every commenced quantity of 10 litres;
- inks : € 0.6197 for every commenced quantity of 2.5 litres;
- pesticides : € 0.6197 for every commenced quantity of 5 litres.

The tax will by all means be limited to € 12.3947 per package.

Exemptions : where the containers are collected through a product-linked deposit-refund system, return premium system, packaging-credit system or collection system.

#### 9.2.5. Pesticides

Rate : as from July 1st, 1996, atrazine, diuron, isoproturon, pentachlorophenol and simazine are subject to an ecotax of € 0.2479 per gram when used as active matter in a pesticide.

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<sup>88</sup>

Class A : very toxic, toxic and corrosive products.  
 Class B : noxious, sensitizing and irritating products.  
 Class C : products not belonging to Class A or B, as well as corrosive, noxious, sensitizing or irritating products which, although they meet the criteria to be classified under A or B, would be allowed for non-professional use by virtue of existing regulations with respect to the marketing, the selling and the use of these products.

Exemptions :

- 1°) pesticides allowed exclusively for applications for which there is no allowed or approved alternative that is not liable to ecotax and the cost of which is bearable from a social and economic point of view;
- 2°) pesticides for agricultural use where they are sold to agricultural and horticultural firms, to recognized users (except to market-gardeners), to stockbreeders and to companies involved in seeds disinfecting;
- 3°) pesticides for non-agricultural use, where they are allowed and used as disinfectants;
- 4°) pesticides for non-agricultural use, where they are allowed and used to fight true dry rot;
- 5°) the active matters enumerated in a list established annually, on the proposal of the Follow-up Commission, by Royal Decree approved by the Council of Ministers and passed by Parliament, and for which the set reduction percentages are obtained.

**9.3. Taxation of existing stocks**

As regards products liable to ecotax which retailers still have in stock at the time the ecotax on those products is brought into force, the tax shall be due, in as far as the products have not been sold, at the end of a period taking into account the normal stock turnover, increased by a safety margin.

After the date limits indicated in the table hereafter, the different groups of products facing the dates in the opposite column shall in no circumstances be found in the retailer's sales space or store rooms, unless the retailer can provide evidence that the ecotax was paid in respect of those goods.

Date limit for retail sale without ecotax in respect of products liable to ecotax but acquired before the ecotax was brought into force	groups of products
July 1st, 1996	disposable cameras, batteries
October 1st, 1996	drink containers, packages of certain industrial products, pesticides



**ANNEX 1 TO CHAPTER 9****List of the categories of appliances which do use  
batteries but to which ecotaxes do not apply**

1. Appliances the batteries of which are soldered or fastened by other means to contact points with a view to permanent current lead for intensive industrial use and/or for the permanent storage of memory and data in computer and office automation devices, provided the use of the batteries and/or accumulators is vital from a technical point of view.
2. Reference cells in scientific and professional devices as well as batteries and accumulators installed in medical devices aimed at maintaining vital functions and in pacemakers when their functioning has to be continuous and when the batteries and accumulators can only be removed by qualified personnel.
3. Portable devices, where the replacement of the batteries by unqualified persons might be hazardous for the user or might endanger the functioning of the device.  
Professional devices intended for use in a critical environment, as would be for instance the presence of volatile substances.
4. Devices the batteries or accumulators of which are not intended to be easily removed by their user, as, for example, the engines of motor vehicles and of certain industrial machines.





**ANNEX 2 TO CHAPTER 9****List of industrial products the packaging  
of which is liable to ecotax**

The products referred to in 9.2.4 are :

- printing inks referred to by NACE-Rev 1 Code 24.30;
  - glues referred to by NACE-Rev 1 Code 24.62;
  - pesticides for agricultural use and pesticides for non-agricultural use as construed in the Law of July 11th, 1969;
  - the solvents enumerated hereafter.
- a. Acyclic hydrocarbons
- n-pentane
  - n-hexane
  - petroleum ether
  - solvent naphtha
  - white spirit
- b. Cyclic hydrocarbons
- cyclohexane
  - benzene
  - toluene
  - xylenes
  - ethylbenzene
- c. Acyclic alcohols
- methanol (methyl alcohol)
  - denatured ethyl alcohol
  - propane-1-ol (propyl alcohol)
  - propane-2-ol (isopropyl alcohol)
  - butane-1-ol
  - 2 methylpropanol-1-ol
- d. Acyclic ethers
- diethyl ether
- e. Acyclic ketones
- acetone
  - butanone (methyl ethyl ketone)
  - 4-methyl pentane-2-on (methyl isobutyl ketone)

- f. Esters
  - methyl acetate
  - ethyl acetate
  - isopropyl acetate
  - n-butyl acetate
  
- g. Chlorinated hydrocarbons
  - chloromethane
  - chloroethane
  - dichloromethane
  - chloroform
  - carbon tetrachloride
  - 1,2-dichloroethane
  - 1,2-dichloropropane & -butane
  - 1,1,1-trichloroethane
  - hexachloroethane
  - trichloroethylene
  - tetrachloroethylene (perchloroethylene)
  
- h. Chlorinated aromatic hydrocarbons
  - dichlorobenzenes.

## CHAPTER TEN TAXES ON DRINKING ESTABLISHMENTS

### *What is new ?*

- *The rates of the opening tax reduced to nil in the Flemish Region and in the Region of Brussels-Capital.*

*The provisions related to opening taxes are : the co-ordinated statutory provisions in respect of establishments selling fermented beverages, such as amended by the Law of July 6th, 1967 (BOJ of November 7th, 1967), as well as the Royal Decree of April 3rd, 1953 laying down the provisions in respect of establishments selling fermented beverages, such as amended by the Royal Decrees of October 9th, 1967 and December 9th, 1977 (BOJ of April 5th, 1953, November 7th, 1967 and January 27th, 1978), as regards the Flemish Region, by the Decree of December 7th, 2001 amending the co-ordinated statutory provisions in respect of establishments selling fermented beverages (BOJ of January 15th, 2002) and, as regards the Region of Brussels-Capital, the Order of January 10th, 2002 amending the co-ordinated statutory provisions of April 3rd, 1953 in respect of establishments selling fermented beverages (BOJ of June 12th, 2002).*

*The provisions related to business licence taxes are : a) the Law of December 28th, 1983 in respect of the supply of alcoholic beverages and in respect of the business licence tax, amended by the Royal Decree of November 27th, 1996 and confirmed by Art. 2, 5° of the law of June 13th, 1997, by the law of December 22nd, 1998 and by the law of February 28th, 1999 (BOJ of December 30th, 1983, December 24th, 1996, June 19th, 1997, January 15th and March 16th, 1999) ; b) the Royal Decree of November 29th, 1983 implementing the law of December 28th, 1983, relating to the supply of alcoholic beverages and to the business licence tax, amended by the Royal Decree of March 25th, 1999 (BOJ of December 30th, 1983 and April 2nd, 1999) ; c) the Ministerial Order of December 29th, 1983 bearing provisions for the implementation of the law of December 28th, 1983 in respect of the supply of alcoholic beverages and of the business licence tax (BOJ of December 30th, 1983).*

### **10.1. Opening tax, annual tax and five-year tax on the sale of fermented drinks**

These taxes are calculated on the annual effective rental value or assumed rental value of the premises used for business purposes. However, there is a minimum rate according to the size of the municipality or of the conurbation (number of inhabitants).

Rates :

- for new establishments: three times the annual rental value; (for itinerant drinking establishments : € 123, for occasional establishments: € 4.90 per running day);
- after 15 years and then every 5 years : certain establishments must pay a five-year tax of one half of the annual rental value (there is a minimum amount to be paid);
- for small retail outlets dealing in spirits : annual tax of 1/5 of the annual rental value (there is a minimum amount); for itinerant drinking establishments : € 7; for occasional establishments : € 0.35 per running day.

*Distinctive rates for the Flemish Region and for the Region of Brussels-Capital:*

- all rates are reduced to nil;
- as regards establishments opened before January 1<sup>st</sup>, 2002 and subject to the 15 + 5 years tax, the nil rates will apply only after expiration of the running 15 or 5 years period.

**10.2. Business licence tax on establishments selling liquors**

This tax is henceforth levied on the partitioned cadastral income related to the part of the premises used as a drinking establishment, the said partition being fixed by a land registry surveyor and adapted annually to the consumer price index in according with art. 518, al 2 of the 1992 Income Tax Code. The tax rate is 10%.

For itinerant drinking establishments, the tax amounts to € 123 per civil year; for occasional drinking establishments, the tax amounts to € 12 per operable day.

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## CHAPTER ELEVEN TAXES ASSIMILATED TO INCOME TAXES

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### *What is new ?*

- *Annual indexation, on July 1<sup>st</sup>, of certain rates of the road tax; introduction of the rates in € as from January 1<sup>st</sup>, 2002.*
- *New rates of Eurostickers (dependent on the environment-friendliness of the vehicles).*
- *Introduction of a tax on employee equity participation and employee participation in profits and enterprise results.*
- *Reform of the road tax on vehicles intended for transportation of goods.*
- *TES relief for certain eco-friendly vehicles and TES increase for second hand vehicles which are at least five years old.*

*These taxes are laid down and regulated by the Code of taxes assimilated to income taxes and by the decrees issued for its implementation.*

### **11.1. Road tax**

#### **11.1.1. Taxable vehicles**

The tax is levied on steam vehicles or motor vehicles, as well as on their trailers and semi-trailers, which are used for the carriage of passengers or goods on public roads (Art. 3 and 4 of the Code of taxes assimilated to income taxes - CTA).

#### **11.1.2. Exemptions**

The exempt vehicles are listed in Art. 5 CTA.

As for motor vehicles and compound vehicles with a maximum allowable mass of not less than 12 tons used for road transport, the following, among others, are exempt from the tax (Art. 5, § 2 CTA) : motor vehicles and compound vehicles used exclusively for the services of national defence, civil defence or contingency, for fire departments and other emergency services, for services in charge of public order, maintenance and management of the road system, as well as a few other motor vehicles and compound vehicles.

As for the other taxable vehicles, the following, among others, are exempt from the tax (Art. 5, § 1 CTA) : vehicles used exclusively for a public service of the various authorities, vehicles exclusively used for public transport, ambulances and vehicles used as a personal means of transport by badly disabled war invalids or other disabled people, certain agricultural vehicles and vehicles of the like, vehicles used exclusively as a taxi, motorcycles not exceeding 250 cm<sup>3</sup> as well as a few other vehicles.

### 11.1.3. Tax base

The tax base is determined, as the case may be, according to the engine power, the cylinder capacity or the maximum allowable mass of the vehicle (Art. 7 and 8 CTA). For motor cars, twin-purpose cars and minibuses not fitted with electromotors and liable to road tax, the tax is determined by the number of HP, which is calculated on the basis of a formula in which all the data are related to the cylinder capacity in litres.

<i>Example</i>
<p>A car has a four-cylinder engine with an internal diameter of 80 mm. Its piston stroke is also 80 mm. The cylinder capacity is therefore 1.6 litres. The fiscal power, expressed in HP, is :</p> $HP = 4 \times \text{cylinder capacity} + \frac{\text{Weight (in 100 kg)}}{4}$ <p>For that car, the second term in the formula is replaced by a coefficient which varies according to the cylinder capacity. For a cylinder capacity of 1.6 litres, the coefficient is equal to 2.25. The fiscal rating in HP amounts therefore for that car to :</p> $4 \times 1.6 + 2.25 = 8.65, \text{ rounded up to } \underline{9 \text{ HP}}.$

### 11.1.4. Indexation of the rates

A number of rates are adjusted **on July 1st** of each year to the fluctuations of the general consumer price index (Art. 11 of CTA). These are the tax rates for the following vehicles :

- a. motor cars, twin-purpose cars and minibuses;
- b. motorcycles;
- c. coaches and buses (the minimum rate **only**);
- d. motor cars, twin-purpose cars and minibuses which are more than 25 years old, camping trailers and trailers for the transportation of one boat, collectors' military vehicles which are more than 30 years old, as well as the minimum rate generally applicable;
- e. trailers and semi-trailers with a maximum allowable mass not exceeding 3,500 kg.

### 11.1.5. Rates

Art. 9 and 10 of CTA provide for road tax tariffs.

Where the *rates are indexed*, the amounts mentioned hereafter, **irrespective of any changes in the law which may occur meanwhile**, are applicable from July 1st, 2002 till June 30th, 2003.

A. Motor cars, twin-purpose vehicles and minibuses

HP	Tax in € (without surcharges, see 11.1.8)
4 or less	54.96
5	68.76
6	99.48
7	129.96
8	160.68
9	191.40
10	221.76
11	287.76
12	353.76
13	419.64
14	485.76
15	551.76
16	722.64
17	893.64
18	1,064.76
19	1,235.40
20	1,406.40
For each additional HP above 20 HP	76.68

B. Motor vehicles intended for road haulage, whose maximum allowable mass is less than 3,500 kg

€ 19.32 per 500 kg of maximum allowable mass.

C. Motorcycles

Uniform € 39.00 tax. Where the cylinder capacity does not exceed 250 cm<sup>3</sup>, an exemption from road tax is granted, but a small tax is levied by the local authorities.

D. Coaches and buses

- if ≤ 10 HP : € 4.44 per HP with a minimum of € 55.08.
- if > 10 HP : € 4.44 per HP + € 0.24 per HP above 10 HP, with a maximum rate of € 12.48 per HP.

E. Motor vehicles or compound vehicles intended for road haulage

If the maximal allowable mass (MAM) of those vehicles exceeds 3,500 kg, the tax amounts are based on tax scales taking into consideration the MAM, the number of axles and the nature of the suspension (on the one hand driving axles with a pneumatic suspension or a suspension recognized as equivalent, and on the other hand the other suspension systems).

Where a self-propelling vehicle is concerned, the MAM to be taken into account is its own MAM; where a compound vehicle is concerned, the MAM to be taken into consideration is the sum of the MAMs of the vehicles making up the compound vehicle.

There are 338 tariff rates, subdivided in 10 tables:

### 1. Self-propelled motor vehicles

- I. Motor vehicle with not more than two axles (30 rates, varying from € 59.97 to € 337.04)
- II. Motor vehicle with three axles (22 rates, varying from € 209.67 to € 448.59)
- III. Motor vehicle with four axles (18 rates, varying from € 248.44 to € 552.11)
- IV. Motor vehicle with more than four axles (58 rates, varying from € 59.97 to € 552.11)

### 2. Compound vehicles

- V. Motor vehicle with not more than two axles and trailer or semi-trailer with a single axle (50 rates, varying from € 59.97 to € 524.15)
- VI. Motor vehicle with two axles and trailer or semi-trailer with two axles (30 rates, varying from € 260.29 to € 705.98)
- VII. Motor vehicle with two axles and trailer or semi-trailer with three axles (16 rates, varying from € 471.00 to € 771.35)
- VIII. Motor vehicle with three axles and trailer or semi-trailer with not more than two axles (16 rates, varying from € 429.20 to € 844.70)
- IX. Motor vehicle with three axles and trailer or semi-trailer with three axles (16 rates, varying from € 286.07 to € 771.35)
- X. Compound vehicles made up differently from the configurations mentioned in V to IX (82 rates, varying from € 59.97 to € 808.01)

### Examples

- 1. Two-axled truck with a MAM of 10,000 kg: € 164.68 when pneumatic suspension and € 205.85 when not;
- 2. Three-axled truck with a MAM of 20,000 kg: € 262.15 when pneumatic suspension and € 374.52 when not;
- 3. Four-axled truck with a MAN of 25,000 kg: € 269.14 when pneumatic suspension and € 448.59 when not;
- 4. Five-axled truck with a MAM of 30,000 kg: € 337.21 when pneumatic suspension and € 534.86 when not;
- 5. Two-axled tractor and single-axled semi-trailer with a MAM of 20,000 kg: € 309.87 when pneumatic suspension and € 393.26 when not;
- 6. Two-axled truck and two-axled trailer with a MAM of 30,000 kg: € 433.81 when pneumatic suspension and € 580.37 when not;
- 7. Three-axled tractor and two-axled semi-trailer with a MAM of 43,000 kg: € 571.00 when pneumatic suspension and € 844.70 when not;
- 8. Three-axled tractor and three-axled semi-trailer with a MAM of 43,000 kg: € 313.61 when pneumatic suspension and € 771.35 when not.



F. Trailers and semi-trailers with a maximal allowable mass (MAM) not exceeding 3,500 kg

€ 25.68 when MAM not exceeding 500 kg;

€ 53.40 when MAM exceeding 500 kg and not exceeding 3,500 kg.

G. Vehicles liable to a fixed-rate charge

This tax amounts to € 24.84 and is levied on :

- motor cars, twin-purpose cars and minibuses older than 25 years;
- camping trailers and trailers for the transportation of one boat;
- collectors' military vehicles older than 30 years.

The **minimum rate** on all vehicles liable to road tax amounts to € 24.84 (Art. 10 CTA).

**11.1.6. Tax abatements**

In certain cases (Art. 14-16 of CTA) and provided certain well defined conditions are met, the following abatements can be granted :

- a. abatement for old vehicles (only for certain vehicles used exclusively for paid conveyance of passengers) ;
- b. abatement for exclusive use within the confines of a port (only for certain vehicles used exclusively for transportation of goods or of any objects) ;
- c. abatement for car fleets (only for certain vehicles used exclusively for paid conveyance of passengers).

**11.1.7. Additional road tax**

Art. 12 and 13 of the CTA provide for the additional road tax (ART).

This tax is levied on all cars, twin-purpose cars and minibuses equipped with an LPG installation. The amounts depend on the fiscal power of the vehicle (HP) :

-	max. 7 HP	:	€ 89.16
-	from 8 to 13 HP	:	€ 148.68
-	more than 13 HP	:	€ 208.20

Where the vehicle is exempt from road tax, it is also exempt from the additional road tax, except in certain cases (ia. ambulances, cars used for private purpose by badly disabled war veterans or by handicapped persons, vehicles used exclusively as taxis, etc.). The yearly indexation (see 11.1.4) does **not** apply to the ART and **no** municipal surcharge (see 11.1.8) is levied.

### **11.1.8. Surcharge in favour of the municipalities**

This surcharge applies to all vehicles liable to the road tax (art. 42 of CTA), except :

- a. to vehicles which exclusively transport people for a consideration by virtue of a license to supply *not* regularly scheduled transportation;
- b. to vehicles for which an abatement of the road tax was granted for exclusive use within the confines of a port;
- c. to vehicles liable to the daily tax (vehicles used in Belgium with a foreign number plate).

After addition of the surcharge, the road tax for the vehicle described in the example in 11.1.3 amounts to :

$$€ 191.40 + € 19.14 = € 210.54$$

Where necessary, the additional road tax (see 11.1.7) or the excise compensating tax (see 11.2) must be added.

### **11.1.9. Summary table of the taxes on motor cars, twin-purpose cars and mini-buses**

The table hereafter summarizes the final tax (road tax + additional road tax or excise compensating tax - see 11.2) on motor cars, twin-purpose cars and mini-buses with petrol engine, diesel engine or LPG-equipment and with a cylinder capacity of up to 6 litres. Municipal surcharge is deemed to apply here.

**Save changes of legal provisions having occurred in the meantime**, the following tariffs in € are applicable from July 1st, 2002 till June 30th, 2003.

Cylinder capacity in litres	HP	Rates in €		
		Petrol	Diesel	LPG
0.7 and less	4	60.46	84.70	149.62
0.8 – 0.9	5	75.64	106.00	164.80
1.0 – 1.1	6	109.43	153.35	198.59
1.2 – 1.3	7	142.96	200.20	232.12
1.4 – 1.5	8	176.75	247.55	325.43
1.6 – 1.7	9	210.54	294.90	359.22
1.8 – 1.9	10	243.94	341.62	392.62
2.0 – 2.1	11	316.54	443.38	465.22
2.2 – 2.3	12	389.14	545.02	537.82
2.4 – 2.5	13	461.60	738.80	610.28
2.6 – 2.7	14	534.34	962.38	742.54
2.8 – 3.0	15	606.94	1,093.06	815.14
3.1 – 3.2	16	794.90	1,431.74	1,003.10
3.3 – 3.4	17	983.00	1,770.44	1,191.20
3.5 – 3.6	18	1,171.24	2,109.16	1,379.44
3.7 – 3.9	19	1,358.94	2,447.34	1,567.14
4.0 – 4.1	20	1,547.04	2,786.28	1,755.24
4.2 – 4.3	21	1,631.39	2,938.19	1,839.59
4.4 – 4.6	22	1,715.74	3,090.10	1,923.94
4.7 – 4.8	23	1,800.08	3,242.00	2,008.28
4.9 – 5.0	24	1,884.43	3,393.91	2,092.63
5.1 – 5.2	25	1,968.78	3,545.82	2,176.98
5.3 – 5.5	26	2,053.13	3,697.73	2,261.33
5.6 – 5.7	27	2,137.48	3,849.64	2,345.68
5.8 – 5.9	28	2,221.82	4,001.54	2,430.02
6.0 – 6.1	29	2,306.17	4,153.45	2,514.37

### 11.2. Excise compensating tax (ECT)

This tax is levied on motor cars, twin-purpose cars and mini-buses with gasoline engine (diesel engine).

It is computed as a function of its fiscal engine rating in HP (see 11.1.3) and the tariffs are as follows :

HP	Amount in €	HP	Amount in €	HP	Amount in €
4 and less	24.24	10	97.68	16	636.84
5	30.36	11	126.84	17	787.44
6	43.92	12	155.88	18	937.92
7	57.24	13	277.20	19	1,088.40
8	70.80	14	428.04	20	1,239.24
9	84.36	15	486.12	per additional HP	67.56

Ambulances, vehicles used for personal purposes by badly disabled war veterans or by other handicapped persons, motor cars used exclusively as taxis or for lease with driver, motor cars and twin-purpose cars which are more than 25 years of age as well as collector's military vehicles which are more than 30 years old and which are liable to a fixed-rate tax (see 11.1.5.G), are exempt from excise compensating tax (art. 110 CTA).

The excise compensating tax is **not** linked to the yearly indexation (see 11.1.4). Moreover, **no** municipal surcharge (see 11.1.8) is levied (Art. 111 CTA).

### 11.3. The Eurosticker

*This Eurosticker is laid down by the Law of December 27th, 1994, approving the Treaty concerning the levy of duties for the use of certain roads by heavy lorries, signed at Brussels on February 9th, 1994, by the Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, and introducing a "Eurosticker" pursuant to Council Directive 93/89/EEC of the European Community of October 25th, 1993, and by the decrees issued for its implementation.*

#### 11.3.1. Definition

The Eurosticker is a tax assimilated to income taxes which is levied as a duty for the use of the road network (Art. 2 of the Law of December 27th, 1994, approving the Treaty establishing the levy of duties on heavy lorries for the use of certain roads).

#### 11.3.2. Vehicles subject to the tax

The Eurosticker is levied on the motor vehicles and the combinations of vehicles which are exclusively destined for the transport of goods by road and whose maximum authorized mass is 12 tons at least (Art. 3).

The Eurosticker is due (Art. 4) :

- for vehicles which are or must be registered in Belgium: as from the very moment they use a public highway;
- for other vehicles subjected to the tax : as soon as they are travelling on the road system specified by the King (see Royal Decree of September 8th, 1997 specifying the road system where the Eurosticker is applicable).

**11.3.3. Exempt vehicles**

The following are exempted (Art.5) :

- vehicles which are destined exclusively for purposes of national defence, civilian protection, intervention in disasters, fire service and other aid services, services for the maintenance of law and order for road maintenance and management, and which are identified as such;
- motor vehicles registered in Belgium, which travel only now and then on the public highway in Belgium and are used by natural or legal persons whose main activity is not the transport of goods, provided the transport does not entail a distortion of competitiveness.

**11.3.4. Rates**

The rates of the Eurosticker are mentioned in Art. 7.

Rates in €:

Country of registration	Annually		Quarterly		Monthly		Weekly		Daily
	<=3 axles	>=4 axles	<=3 axles	>=4 axles	<=3 axles	>=4 axles	<=3 axles	>=4 axles	
Belgium									
- emission norm non-EURO	960	1,550	288	465	-	-	-	-	-
- emission norm EURO I	850	1,400	255	420	-	-	-	-	-
- emission norm EURO II and cleaner	750	1,250	225	375	-	-	-	-	-
1. All other countries									
2. Vehicles covered by a Belgian trader's number plate or a temporary number plate									
- emission norm non-EURO	960	1,550	-	-	96	155	26	41	8
- emission norm EURO I	850	1,400	-	-	85	140	23	37	8
- emission norm EURO II and cleaner	750	1,250	-	-	75	125	20	33	8

**11.4. The tax on the entry into service (TES)****11.4.1. Taxable vehicles**

The tax on the entry into service is levied on :

- a. motor cars, twin-purpose vehicles, minibuses and motorcycles;
- b. airplanes, seaplanes, helicopters, gliders, balloons and certain other aircraft;
- c. yachts and pleasure sea-craft of a length exceeding 7.5 metres, when these craft must have a certificate of registry;

when these vehicles, aircraft or boats are entered into service on public roads or when they are used in Belgium (Art. 94 of the Code of taxes assimilated to stamp duties). The fiscal debt arises at the moment of the entry into service, which is determined in a different way in the case of a road vehicle, a boat or an aircraft (respectively registration in the directory of the Office of Traffic (DIV), registration by the Aviation Board and delivery of the certificate of registry by the Navy and Inland Navigation Administration).

The tax is due both upon the first entry into service and upon a subsequent entry into service of the same road vehicle, aircraft or boat under another person's name.

As from January 1st, 2002, this tax is not due however in the case of a transfer between spouses or in the case of a transfer between divorcees where the transfer is due to the divorce, provided the tax due on the road vehicle, aircraft or boat has been fully paid by the assignor.

In the Walloon Region, the exemption also applies, as from January 1st, 2002 and under the same conditions of previous payment by the assignor, to legal cohabitants, where the transfer is due to the termination of the legal cohabitation. Is deemed to be a "legal cohabitant", any person living together with the holder of the first registration on the day of the registration under a new name and having made a sworn statement of cohabitation in accordance with the regulations of Book III, Title Vbis of the Civil Code, except where there is a parent/child, brother/sister or uncle-aunt/nephew-niece relation between the aforesaid cohabitants, and provided the sworn statement of cohabitation was made at least one year before the date of the new registration. "Termination of legal cohabitation" is deemed to be the end of the state of legal cohabitation following a sworn statement of termination of legal cohabitation, made in accordance with article 1476 § 2 of the Civil Code.

#### **11.4.2. Exemptions**

The exemptions are listed in Art. 96 of the above-mentioned Code. They apply ia to :

- a. aircraft and boats used exclusively by a public service of the State;
- b. vehicles used exclusively for the transportation of ill or wounded persons;
- c. vehicles used by very disabled war invalids and certain handicapped persons.

#### **11.4.3. Tax base**

For road vehicles the tax is due on the basis of their engine power, expressed either in fiscal HP or in kilowatt (kW).

For aircraft and boats the tax is a fixed-rate charge.

For all these means of transport the tax depends also, however, on the period elapsed since the first entry into service.

#### **11.4.4. Rates**

##### **A. Motor cars, twin-purpose vehicles, minibuses and motor cycles**

HP	kW	Tax in €
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## INDIRECT TAXATION

0 to 8	0 to 70	61.50
9 and 10	71 to 85	123.00
11	86 to 100	495.00
12 to 14	101 to 110	867.00
15	111 to 120	1,239.00
16 and 17	121 to 155	2,478.00
More than 17	More than 155	4,957.00

If the power of a given engine expressed in fiscal HP and in kW causes a different amount of tax to be levied, the tax is due for the **larger** amount.

These vehicles entitle to a tax reduction when they meet the euro 4 emission standards and/or when they run on LPG. The following table shows the amount of the reduction.

Tax year	2002	2003	afterwards
Euro 4 diesel	€ 620	€ 496	€ 0
Euro 4 petrol	€ 323	€ 248	€ 0
LPG	€ 298	€ 298	€ 298

The reduction shall never exceed the amount of the tax due. Where a vehicle entitles both to the euro 4-petrol and to the LPG reduction, the reduction is limited to the higher of the amounts applicable to either kind of fuel in the tax year concerned.

If these vehicles have already been registered previously during **at least one year** either in this country or abroad before their final importation, the tax is reduced to a percentage of the said amounts, according to the period elapsed between the first registration and the new registration.

Period elapsed since first registration	The tax is reduced to the following percentage of the amount
1 year to < 2 years	90%
2 years to < 3 years	80%
3 years to < 4 years	70%
4 years to < 5 years	60%
5 years to < 6 years	55%
6 years to < 7 years	50%
7 years to < 8 years	45%
8 years to < 9 years	40%
9 years to < 10 years	35%
10 years to < 11 years	30%
11 years to < 12 years	25%
12 years to < 13 years	20%
13 years to < 14 years	15%
14 years to < 15 years	10%
at least 15 years	€ 61.50 (flat rate)

## INDIRECT TAXATION

After the reduction has been applied the tax **cannot**, however, **be less than € 61.50**.

### Example

A car has an engine with a fiscal horse-power of 11 HP and a power of 110 kW. The engine does not meet the euro 4 emission standard and does not run on LPG. Upon the first entry into service, the tax amounts to € 867.00 on this car (the power in kW results in a higher amount than the power in fiscal HP). Upon registration 15 months after the first registration (i.e. between 1 year and less than two years) the tax amounts to € 867.00 x 90% = € 780.30. Upon registration 7 years after the first registration, the tax on the entry into service amounts to € 867.00 x 45% = € 390.15.

### B. Aircraft

A fixed-rate amount of € 619 for ultra-light motorized aircraft and € 2,478 for the others.

If these aircraft have already been registered previously during at least one year either in this country or abroad before their final importation, the tax is reduced according to the following table.

Period elapsed since first registration	The tax is reduced to the following percentage of the amount
1 year to < 2 years	90 %
2 years to < 3 years	80 %
3 years to < 4 years	70 %
4 years to < 5 years	60 %
5 years to < 6 years	50 %
6 years to < 7 years	40 %
7 years to < 8 years	30 %
8 years to < 9 years	20 %
9 years to < 10 years	10 %
at least 10 years	€ 61.50 (flat rate)

### Example

An ultra-light motorized aircraft is registered for the first time. The tax amounts to € 619. If a subsequent registration occurs 7.5 years after the first, the tax amounts to € 619 x 30% = € 185.70. Upon a subsequent registration at least 10 years after the first, the tax amounts to € 61.50 (flat rate).



C. Boats

A fixed-rate amount of € 2,478.

If these boats have been previously provided with a certificate of registry either in this country or abroad before their final importation during at least one year, the tax is reduced according to the same scheme as for aircraft (see B above).

<i>Example</i>
<i>A boat receives a certificate for the first time. The tax amounts to € 2,478. If a subsequent delivery of a certificate occurs 9.5 years after the first, the tax amounts to € 2,478 x 10% = € 247.80. Upon delivery of a certificate at least 10 years after the first, the tax amounts to € 61.50 (flat rate).</i>

**11.5. Betting and gambling tax (BGT)**

The tax on betting and gambling is levied on the gross amount of the sums involved.

The general rate is 15% in the Flemish region and in the region of Brussels-Capital, and 11% in the Walloon region. There are some special cases though (horse-racing, casino gambling, pigeons) and there are exemptions (exempt lotteries such as "lotto", "presto", "subito", etc.).

**11.6. Amusement machine licence duty**

The tax on automatic amusement machines is levied on machines which are placed on the public highway, in places accessible to the public and in private clubs, irrespective of the fact that the entry to these circles is subjected to certain formalities or not.

The amount of the tax varies according to the category of the device and the Region where it is placed.

There are five categories, from A to E. The amounts of the tax are as follows :

Category	Flemish Region	Walloon Region	Region of Brussels Capital
A	3,570	1,365	3,570
B	1,290	895	1,290
C	350	225	350
D	250	150	250
E	150	100	150

in €

**11.7. Tax on employee equity participation and employee participation in profits and enterprise results**

This tax, chargeable to employees, is levied on their participation in the equity capital or profits, in accordance with the Act of May 22<sup>nd</sup>, 2001 bearing provisions related to employee equity participation and employee participation in profits and enterprise results. Where certain conditions in respect of a non-redemption period are not satisfied (in principle not less than two years and not more than five years), a **supplementary tax** is charged (art.112 CTA).

The basis of the **tax** (“base tax”) is determined as follows (art. 113 CTA) :

- 1° with respect to participation in profits: the amount paid out cash in accordance with the participation scheme (after deduction of social security contributions);
- 2° with respect to equity participation: the amount attributable to the equity participation (minimum requirements as to the appreciation), attributed in accordance with the annual participation scheme;
- 3° with respect to profits which are subject of an investment savings scheme (the benefits attributed to the employee are put at the disposal of the company as a non-subordinated loan) : the amount in cash attributed in accordance with the company’s annual participation scheme.

The basis of the **supplementary tax** is the same as in 2° above with respect to equity participation and as in 3° above with respect to participation in profits which are subject of an investment savings scheme; in both cases, the “base tax” is first deducted (art. 114 CTA).

The rates of the **tax** (“base tax”) are :

- 15% for equity participations
- 15% for participations in profits attributed in the framework of an investment savings scheme which are the subject of a non-subordinated loan
- 25% for participations in profits that are not chargeable at the 15% rate.

The rate of the **supplementary tax** is 23.29%.

**PART THREE**

**SOME SPECIAL TAX REGIMES**

CHAPTER ONE	SPECIAL CORPORATE INCOME TAX REGIMES	197
CHAPTER TWO	PENSION SCHEMES AND LIFE INSURANCES	205



## CHAPTER ONE SPECIAL CORPORATE INCOME TAX REGIMES

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This chapter describes the main features of five special corporate income tax regimes :

- co-ordination centres,
- distribution centres,
- service centres,
- employment zones,
- closed-end UCITS and open-end UCITS.

The special regimes relating to reconversion companies and to innovation companies have been withdrawn from the Tax Survey, these fiscal advantages having been frozen since 1990. Interested readers can turn to previous issues.

### 1.1. Co-ordination centres <sup>(89)</sup>

Any registered Belgian company or any Belgian subsidiary of a registered foreign company can enjoy the tax arrangements relating to co-ordination centres if they fulfil the following conditions:

- they must be part of a group whose consolidated capital and reserves reach € 24 millions and whose consolidated annual turnover reaches € 240 millions;
- their exclusive purpose must be the development and centralization of one or more co-ordination activities performed for the sole benefit of all or part of the companies in the group.

The co-ordination centre enjoys the following tax advantages :

- exemption from the proportional registration duties on capital subscription;
- calculation of the taxable profit by a standard fixed-rate method depending on the activity exercised and on the basis of the expenses and operating costs with the exclusion of personnel costs and financial charges ;
- exemption from the withholding tax on income from real estate, equipment and tools used by the centre within the context of its professional activity;
- exemption from the withholding tax on income from movable property on distributed profits and revenue from credit or loans.

The provider of capital can profit from a notional withholding tax on income from movable property (N.T.Mov.) if the following conditions are met :

- the financing is the result of an agreement concluded before July 24th, 1991: the notional withholding tax on income from movable property has been suppressed for agreements concluded from that date;
- the capital borrowed must be assigned in Belgium for fixed assets or for research and development expenses.

The notional withholding tax on income from movable property is awarded at a rate of 10/90 <sup>(90)</sup> :

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<sup>89</sup> Royal Decree n°187 of 30.12.1982. Various modifications have been made by the laws of 11.04.1983, 28.12.1983, 31.07.1984, 27.12.1984 and 04.04.1995, as well as by the Royal Decree of 20.12.1984. The rate of notional withholding tax on income from movable property was modified by the laws of 22.02.1990 and of 28.12.1990.

- in the case of financing by credit, if this relates to agreements concluded from January 22nd, 1990 onwards;
- in the case of financing by the issue of shares, to those which relate to investments recorded from July 23rd, 1990 onwards.

Financing undertaken before this date continues to enjoy a notional withholding tax on income from movable property of 25/75.

This notional withholding tax is added to the taxable amount of corporate income tax, as a disallowed expense (DE); it can be set off against the corporate income tax and can be repayable.

From the first of January 1993 the co-ordination centres are liable to a tax on the personnel employed. This tax is due each year, as from the year following that in which the centre was established. It amounts to € 10,000 per full-time worker on January 1 of the tax period and is limited to € 100,000.

### 1.2. Distribution centres

Distribution centres are legal entities which form part of a (usually multinational) group of companies and whose aim is to centralize all the distributional activities of the members of the group where the customers' demand is located.

They can enjoy a special tax regime enacted in administrative regulations <sup>(91)</sup>.

The basic principle behind this special tax regime is that the members of the group are allowed to carry out activities for the benefit of the companies of the group at very low prices, without the tax administration taking action against the low profit margin.

To enjoy this special regime, a distribution centre must meet the following conditions :

- 1° it must be liable to the Corporate Income Tax or to the Non-Resident Corp. Tax ;
- 2° its activities must be confined to :
  - the purchase, either in its own name or in the name and for the account of **group members** for their own use, of raw materials, finished products and merchandise; the storage, handling and packaging thereof; the selling, transportation and delivery of the products to members of the group; the preparation and sending of invoices;
  - the collection of orders;
  - the handling of all administrative and financial formalities concerning the activities above, such as bank operations, formalities concerning VAT, customs and excise, etc.

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<sup>90</sup> For these investments, the allowance of the notional withholding tax on income from movable property to the provider of capital could not be cumulated with the awarding of the investment allowance for the company in which these investments were made.

<sup>91</sup> Circular letter Ci.RH 421/463.062 of November 30th, 1994, Tax Bulletin n° 745, January 1995.

## SOME SPECIAL TAX REGIMES

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3° under no circumstances shall it carry out activities modifying the essential quality of the finished products or merchandise it has to deliver;

4° it may not bear any business risks or only insignificant ones.

The taxable gain of the distribution centres which meet the above conditions can not be less than a fixed amount computed as follows :

- + Turnover
- minus purchase price of the products
- minus services included in the cost price, provided these services have been invoiced by the service providing company at a normal price
- minus 105% of the remaining operating costs.

By granting this special tax regime, the Administration assumes that within the margins of the amount thus computed, the companies of the group grant no abnormal or benevolent advantage.

This rule applies to each of the companies of the group separately.

The greater of the following amounts shall be taken into account as taxable gain :

- a) the sum of the net variation of the taxed reserves, the disallowed expenses and the distributed dividends (normal regime);
- b) the fixed gains such as computed above.

Exempt and non-chargeable constituents may be deducted from the benefit thus computed.

### 1.3. Service centres <sup>(92)</sup>

Service centres are independent entities being part of a Belgian or foreign group of **affiliated companies**. Their sole object must be the performance of one or several activities on behalf of that group of companies. Hence, only members of the group can be customers of a Service centre.

Independent service centres, acting in their own name and selling their services to third parties, are not entitled to the special tax regime.

The special tax regime is optional and will be granted for renewable periods of five years.

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<sup>92</sup> Circular letter Ci.RH 421/486.766 of 26.07.1996, Tax Bulletin, N° 763, August 1996.

In order to be eligible for the special tax regime, service centres must meet the **following conditions** :

- 1° they must be subject to Corporate Income Tax or to Non-Resident Corporate Income Tax;
- 2° they must perform one or several of the following activities :
  - activities whose nature is essentially **preparatory** or **auxiliary**, e.g. the centralization of the purchases of goods on behalf of the group;
  - **supplying information to the customers** : are to be included here, the activities where the service centre proceeds as an intermediary between members of the group and external customers or between different members of the group, e.g. information about goods and services provided by the companies of the group;
  - activities **contributing passively** to sales operations. The service centre acts in the name of the group and on their account. It has no power of decision with regard to sales operations;
  - activities implying an **active participation in sales** operations : the service centre can in certain circumstances act in its own name but on account of the members of the group, e.g. the service centre is allowed to collect orders of which the conditions (price, quantity, terms of delivery and payment, etc.) have been set beforehand by the companies of the group.  
Activities with a view to increasing the turnover of the companies of the group shall always be excluded.
- 3° they may under no circumstances add to the value of the goods or services provided ;
- 4° they may bear no business risks but insignificant ones.

Activities which are exclusively commercial (direct sales, marketing, etc.) and manufacturing processes are deemed to be unauthorized activities.

As a rule, the taxable profits are subject to the ordinary corporate income tax rules.

Where the service centre is eligible for the special tax regime, it is deemed not to have granted any abnormal or benevolent advantage (as meant in art. 26 and 79 of the 1992 Income Tax Code), provided the turnover is not less than the sum of A + B,

- A being the operating expenses incurred by the activities which don't imply an active participation in the sales operations, increased by a determined percentage : this is the so-called "cost-plus method";
- B being a fixed percentage of the sales in which the service centre has served as an active intermediary : this is called the "resale-minus method".



### **“COST-PLUS” METHOD**

Operating expenses include the total amount of the expenses booked in the accounts 60 through 64 of the Chart of accounts, except for disallowed expenses, for taxed provisions and reserves and for the part of the turnover that is returned to the companies of the group.

To these operating expenses is added a mark-up varying from 5% to 15%. This mark-up is determined for each of the service centres according to the volume of the activities they perform.

Rates applying to this regime are :

- preparatory and auxiliary activities : 5%
- provision of information to customers : 10%
- activities contributing passively to sales : 15%.

The service centre may charge some of the expenses to the companies of the group without applying the mark-up, notably

- all personnel costs;
- re-invoicing of services provided to the service centre by third parties.

### **“RESALE-MINUS” METHOD**

This method only concerns activities where the Service centre has taken an active part in the sales operations. The centre shall charge the companies of the group with a remuneration for its intervention. This remuneration shall be increased, in function of the real nature of the contribution of the service centre and of the risks the centre has borne, by a percentage not exceeding 5%.

## **1.4. Employment zones**

Companies set up within employment zones <sup>(93)</sup>, of which the territory has been delimited in the three regions of the country, enjoy the following tax advantages:

- total exemption for 10 years from the corporate income tax on reserved or distributed profits;
- total exemption from the withholding tax on income from movable property on dividends distributed to shareholders;
- for investments of which the financing is the result of an agreement concluded before July 24th, 1991, awarding of the notional withholding tax on capital income from movable property to the provider of capital <sup>(94)</sup>;
- exemption from the withholding tax on income from immovable property;
- exemption from the proportional registration duty on capital subscriptions.

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<sup>93</sup> Cf. Royal Decree no. 118 of 23.12.1982.

<sup>94</sup> According to the same arrangements as for co-ordination centres.

### **1.5. Closed-end investment trusts and open-end investment trusts**

Since the law of December 4th, 1990 on financial operations and markets, Belgian investment trusts can adopt three legal forms :

- Investment Trust;
- Closed-end UCITs (SICAF/BEVAK);
- Open-end UCITs (SICAV/BEVEK).

In contrast to common investment funds which are undistributed, the two new legal forms (Closed-end UCITs and open-end UCITs) are legal entities which are in principle liable to corporate income tax.

#### **1.5.1. Taxation of UCITs**

The investment company is only liable to corporate income tax on a base limited to disallowed expenses <sup>(95)</sup> and any abnormal or benevolent advantages received.

As the company is not taxed on distributed and reserved profits, no deduction is awarded to the investment company for PE.

This tax base is subject to the normal rate of CIT.

The investment company is, moreover, exempt from the proportional registration duties on capital subscription.

#### **1.5.2. Allocation of revenue**

- The revenue from capitalization shares is not liable to withholding tax on income from movable property. However, these shares are always subjected to the tax on stock exchange transactions both when they are purchased and when they are sold or transferred to another department within the same open-end UCIT.
- The revenue from distribution shares are considered as dividends and are therefore liable to the withholding tax on income from movable property of 15%. Dividends distributed by a PRICAF are not subjected to the withholding tax on income from movable property up to an amount equal to the capital gains on shares realized by the PRICAF.

#### **1.5.3. Revenue allocated to resident natural persons**

Revenue from a capitalization open-end UCIT constitutes non-taxable revenue for private savers <sup>(96)</sup>.

The withholding tax on the revenue from distribution shares of an open-end UCIT and a closed-end UCIT is definitive.

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<sup>95</sup> Including the withholding taxes on the income which it collects.

<sup>96</sup> A private saver is defined here as any person for whom the withholding tax on income from movable property represents the final tax; either natural persons who have not assigned the securities to their professional activity or legal persons which are not liable to corporate income tax.

### **1.5.4. Revenue allocated to resident companies**

Revenue from a capitalization open-end UCIT, revenue from a distribution open-end UCIT and from a closed-end UCIT are treated similarly: they are taxable and the deduction for PE is only awarded for that proportion of revenue which, at the time of the collection by the investment company, is made up of dividends which themselves meet the requirements for the awarding of the deduction for PE : application of the transparency rule.

### **1.5.5. Tax on the acquisition, sale or change of department**

The income from capital shares is not liable to the withholding tax on income from movable property. But the tax on stock exchange transactions is applied :

- at a rate of 0.50%, on each sale and acquisition for a consideration of capitalization shares of investment trusts;
- at a rate of 0.50%, on the purchase by an investment trust of its own capitalization shares;
- at a rate of 1%, on the conversion, from one department to another, of capitalization or distribution shares into capitalization shares;
- at a rate of 0.50%, on the conversions, from one department to another, of capitalization into distribution shares;
- at a rate of 1%, on the conversions, within one department, of distribution shares into capitalization shares;
- at a rate of 0.50%, on the conversions, within the same department, of capitalization shares into distribution shares.



## CHAPTER TWO PENSION SCHEMES AND LIFE INSURANCES

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### 2.1. Pension schemes

#### 2.1.1. *Forms of pension schemes*

By means of a final instalment, any taxpayer can join a pension scheme, using one of the following formulas :

##### THE INDIVIDUAL SAVINGS ACCOUNT

The plan participant opens an individual savings account with a financial institution. He may either adopt a self-administered approach or authorize the trust in writing to manage the funds in his name. In practise, this formula is rarely used, due on the one hand to the smallness of the amounts and on the other hand to the high costs attached to the purchasing and managing of small portfolios.

##### THE COLLECTIVE SAVINGS ACCOUNT

The plan participant opens a collective savings account with a financial institution, but the assets are pooled and managed by the trust according to the investment regulations established by law, in a pension fund specially designed for that purpose.

##### THE SAVINGS INSURANCE

The plan participant subscribes a savings insurance with an insurance company in order to build up a pension, annuities or a capital to be paid on death or on survival.

#### 2.1.2. *The tax regime of deposits*

Up to € 580 per taxpayer and per calender year can give rise to a tax reduction, provided the following conditions are met :

- The savings account or savings insurance must have been subscribed :
  - by an inhabitant of the Kingdom aged 18 or over, but less than 65;
  - for a duration of ten years at least <sup>(97)</sup>.
- At the subscription of the insurance, it shall be stipulated that the benefits of the insurance will be paid :
  - to the plan participant himself, in the event of life;
  - to the plan participant's spouse or to relatives up to the second degree, in the event of death.

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<sup>97</sup>

Since tax year 1993, the mandatory duration has been reduced to 5 years for individuals aged 55 or over on December 31st, 1986, that is to say for persons born in 1932 or before.

## SOME SPECIAL TAX REGIMES

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- In any particular tax period, the plan participant is allowed to make payments to one specific account or to one savings insurance only, and the payments must be made with only one institution or company. He may hold more than one savings account or savings insurance, but the payments made in one particular tax period are restricted to one of them.

Tax reductions are computed at the “special average rate” <sup>(98)</sup>.

Where a reduction for pension plans is granted, no reduction is available for the purchase of employer’s shares.

### **2.1.3. Taxation upon withdrawal**

« Withdrawals » are liable to tax only if a fiscal advantage (deduction or reduction) was granted, at least on one occasion, in respect of the « deposits » used for the building up of the capital.

#### **DETERMINATION OF THE TAXABLE AMOUNT**

##### **SAVINGS ACCOUNT**

The taxable amount corresponds to the “theoretical capital”.

The theoretical capital is a notional amount obtained by applying a capitalization rate of :

- 6.25% as regards premiums paid until 31.12.1991;
- 4.75% as regards premiums paid as from 01.01.1992.

##### **SAVINGS INSURANCE**

The theoretical capital is a notional amount obtained by applying the above mentioned capitalization rates to the premiums paid. Participations in profits are not liable to tax provided they are paid out together with the pensions, annuities, principal or surrender value provided for in the savings policy.

##### **TAXATION REGIME**

Since 1993, built-up savings are liable to an “advance taxation”. This advanced taxation, or “taxation on long term savings” is assimilated to a stamp duty (an indirect tax); it supersedes PIT. Inasmuch as the tax has been paid, the theoretical capital is not liable to PIT.

Moreover, the tax treatment differs according to the time when the built-up capital is surrendered, i.e. whether the withdrawal takes place **before or after the age of 60**.

### **1. WITHDRAWAL AFTER THE AGE OF 60**

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<sup>98</sup> See Part I, page 35.

The advance taxation is due when the plan participant reaches the age of 60. Thereafter, withdrawals may be made free of tax at any time. The plan participant is allowed to continue making contributions to the pension plan until he is 64 years old. Such contributions are not taxed but they entitle to a tax reduction. The tax is set at :

- 16.5% of the theoretical capital built up with premiums paid until 31.12.1992;
- 10% of the theoretical capital built up with premiums paid as from 01.01.1993.

### **2. WITHDRAWAL BEFORE THE AGE OF 60**

The theoretical capital is taxed at the 16.5% rate with regard to premiums paid until 31.12.1992 and at the 10% rate for premiums paid as from 01.01.1993, where the following four conditions are met **coincidentally** :

- the withdrawal occurs at the participant's (early) retirement;
- the pension scheme duration of ten years is met;
- all deposits have been kept on the account for five years at least;
- the instalments were spread over five different years, at least.

The retiring age is 65 for men and 62 for women.

Where one or more of the four conditions are not met, the theoretical capital is taxed :

- at the progressive rate, as regards premiums paid until 31.12.1991;
- at the 33% rate, for premiums paid as from 01.01.1992.

Where the taxpayer was already 55 or over when he opened a savings account or subscribed a savings insurance, the first tax liability will occur on the tenth anniversary of the contract. But if the built-up savings are surrendered before that date, the taxpayer being 60 or over 60 at the moment of surrender, the tax liability will arise at the time of repayment.

Where the surrender takes the form of annuities, the latter will be charged at the progressive rate.

#### **2.1.4. Inheritance tax**

When the account holder deceases, inheritance tax is due on the capital received.

In the case of a savings insurance the policy-owner can have named a beneficiary to whom the proceeds are to be paid. If such is the case, the proceeds of the savings insurance are liable to inheritance tax, pursuant to a legal fiction, although they are not part of the estate of the deceased.

### 2.2. Individual life insurance

Individual life insurances can be classified in three different types of products <sup>(99)</sup> :

- life insurance policies providing the payment of benefits upon the death of the insured;
- life insurance policies providing annuities or a lump sum upon the survival of the insured;
- endowment policies, where a capital is paid both in case of death and in case of life.

#### 2.2.1. Tax treatment of premiums paid

Life policy holders are entitled, under certain conditions <sup>(100)</sup>, to tax reductions in respect of premiums paid under an individual life insurance.

A distinction is made between “tax reduction for long term savings” and “increased tax reduction for savings for house purchase”.

Premiums paid are only taken into consideration for the tax reduction (both for the tax reduction for long term savings and for the increased tax reduction for house purchase) inasmuch as they do not exceed the following limits :

- a relative limit, set at 15% of the first € 1,440 bracket of earned income, plus 6% of the remainder;
- an absolute limit of € 1,730.

Where both reductions are to be applied simultaneously, premiums benefiting from the increased reduction for house purchase will be taken into account first.

The tax reduction for long term savings applies to premiums paid for individual life insurance policies which are not entitled to the increased deduction for house purchase. The reduction is computed at the “special average rate”, determined for each of the spouses separately :

- by subtracting from the tax calculated according to the tax scale, the tax relating to the exempt portion granted to that spouse, and
- by dividing the result of the subtraction by the aggregate taxable income of the concerned spouse.

The rate so computed shall not be less than 30%, nor shall it exceed 40%.

The increased tax reduction for house purchase supersedes the tax reduction for long term savings when the taxpayer has used the premiums for the reinstatement, the securing or the amortization of a mortgage loan entered into with a view to building, buying or improving a house in Belgium which is the borrower’s only dwelling. The increased reduction is granted, for each spouse separately, at the highest marginal rate applying to that spouse.

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<sup>99</sup> Are concerned here, the common insurance products offered by insurance companies, the so-called “21st branch”.

<sup>100</sup> See Part I, Chapter 1, page 23.



The premiums paid only qualify for the increased tax reduction in respect of the first tax bracket. This bracket is determined in function of the year the contract was entered into. The amounts are to be found in Table 1.5, page 24. This first bracket can be increased by 5, 10, 20 or 30% respectively when the taxpayer has one, two, three or more than three dependent children. The number of dependent children to be taken into account is the one recorded on January 1<sup>st</sup> following the signature of the mortgage loan.

### **2.2.2. Tax treatment of the benefits**

#### **A. Tax on long-term savings**

Since 1993, individual insurance contracts have been liable to **the tax on long-term savings**.

Insurance companies are subject to this one-shot taxation on the theoretical surrender value of the life policy **as soon as the assured reaches the age of 60**, whether any surrenders were made or not.

When the insurance contract is opened or subscribed by a taxpayer of 55 years of age or over 55, the tax liability arises on the tenth anniversary of the signature of the contract. The tax is levied at the time of allotment, unless the capital is surrendered before that time the taxpayer having reached the age of 60.

The advance taxation amounts to :

- 16.5% of the theoretical surrender value, pensions, annuities or capital of the insurance policy, built up with premiums paid until 31.12.1992;
- 10% of the theoretical surrender value, pensions, annuities or capital of the insurance policy, built up with premiums paid as from 01.01.1993;
- 33% of the surrender value, when the surrender is made before the contractual termination date.

#### **B. Taxation under PIT**

Capitals and surrender values are taxed separately under PIT where the chargeable event (liquidation, surrender) takes place **before** the taxpayer reaches **the age of 60** <sup>(101)</sup>.

Three situations can occur :

- contracts used for the reinstatement or the securing of a mortgage loan,
- other contracts, paid out at the normal termination, and cases assimilated to these,
- other contracts, paid out at any other time.

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<sup>101</sup> See Annex 2, Tax Bulletin, N°. 765, November 1996.

## SOME SPECIAL TAX REGIMES

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### CONTRACTS USED FOR THE REINSTATEMENT OR THE SECURING OF A MORTGAGE LOAN

Capitals and surrender values of individual life insurance contracts are converted in a notional annuity (conversion annuity) in the following cases :

- capitals of balance due insurance contracts ,
- capitals and surrender values of individual life insurance contracts, up to the amounts used for the **reinstatement or the securing of a mortgage loan**.

In order to be converted into a notional annuity, the capitals have to be paid upon the policy holder's death, at the normal termination of the insurance contract or in the course of the five years preceding the termination date of the contract. In the other cases, the capital itself is taxed at the progressive rate.

The conversion rates are the following :

*Table of conversion rates*

Age of the beneficiary at the time of the surrender	Conversion rates
40 and below	1
from 41 to 45	1.5
from 46 to 50	2
from 51 to 55	2.5
from 56 to 58	3
from 59 to 60	3.5
from 61 to 62	4
from 63 to 64	4.5
65 and over	5

For each of the taxable periods, the progressive rate applies to the aggregate amount of the converted notional interests and the other income, starting at the time the capital is surrendered.

The requirement to report income is limited to :

- 10 years when the conversion rate is 5% (the policy holder is 65 or over);
- 13 years when the conversion rate is less than 5% (the policy holder is under 65).

The requirement to report income comes to an end if the policy holder deceases before the end of that period.

### OTHER CONTRACTS PAID OUT AT THE NORMAL TERMINATION, AND CASES ASSIMILATED TO THESE

It concerns :

- capital paid out at the **normal termination** of a contract ;
- surrender values of individual life insurance contracts paid out in the course of **the five years preceding** the termination of the contract ;
- capitals paid out upon **death** of the life-assured ;

that result from contracts that have not been used for the securing of reinstatement of a mortgage loan.

The rate amounts to :

- 16.5% inasmuch as the capital/surrender value are formed by premiums paid until 31.12.1992;
- 10% inasmuch as the capital/surrender value are formed by premiums paid as from 01.01.1993.

### OTHER CONTRACTS, PAID OUT AT ANY OTHER TIME

When the proceeds are paid out at any other time and the contracts were not used for the reinstatement or the securing of a mortgage loan, the following rates apply :

- progressive rate for capital/surrender values built up by premiums paid until 31.12.1991;
- 33% for capital/surrender values built up as from 01.01.1992.

### C. Remarks

If, in the scheme of an individual life insurance contract, the liquidation is made in the form of an annuity, then the annuity is taxable under PIT at the progressive rate (with application of tax reductions for pensions).

The annuities are not liable to tax to the extent that :

- the premiums were paid before 1950;
- the individual life premiums have never been deducted from the chargeable earned income and have never attracted a tax reduction.

The tax on long-term savings is **not** due for :

- insurance contracts providing benefits upon the death of the life assured only;
- life insurance contracts utilized exclusively for the reinstatement or the repayment of a mortgage loan.

The capital, surrender values and annuities of these contracts are liable to PIT.

### **2.3. Group insurances**

A group insurance is a contract effected between an employer or a group of employers and an insurance company with a view to the providing of additional retirement benefits to all or part of the employees.

Group insurances are subject to rules providing for :

- conditions of joining;
- rights and duties of the employees;
- rights and duties of the employers.

The financing is secured from two kinds of contributions :

- employer's contributions, paid by the employer;
- employees' contributions, withheld at source from salaries by the employer.

A 4.4% tax is due both on the employees' and on the employer's contributions. A further social security contribution is due on the employer's contribution, at the 8.86% rate.

#### **2.3.1. Tax treatment of premiums paid**

##### **FOR THE EMPLOYER**

Employer's contributions to a group insurance are tax deductible to the extent that the benefits they provide, added to the statutory and extra-statutory pensions, do not exceed 80% of the last regular gross annual salary.

##### **FOR THE EMPLOYEE**

The personal employee's contributions entitle to a tax rebate which is calculated at the « special average rate » <sup>(102)</sup>.

To be entitled to this tax rebate, the contributions must satisfy the following conditions :

- they are personal contributions to an additional assurance against old age and premature death;
- they are made under a contract assuring a capital or an annuity on death or on survival;
- they are withheld on salaries by the employer;
- they are paid to an insurance company or to a pension fund established in Belgium, and the payment is a final one;
- they meet the « 80% of last gross yearly salary » condition, mentioned above.

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<sup>102</sup> See Part 1, Ch.1, page 35.

### **2.3.2. Tax treatment of the benefits**

#### **A. Attribution of a capital**

Where a group insurance is liquidated, a **separate assessment** is made for the capital or paid surrender value, provided the payment satisfies one of the following conditions :

- it takes place at maturity of the contract;
- it takes place within the five years preceding maturity;
- it takes place on the death of the insured;
- it takes place on the retirement or early retirement of the insured;
- it takes place at the normal date of complete and final cessation of the professional activity <sup>(103)</sup>.

The amount paid is taxed at the following rates :

- 16.5% for the part of the capital built up with instalments made before 01.01.1993;
- 16.5% for the part of the capital built up with employer's contributions made from 01.01.1993 onwards;
- 10% for the part of the capital representing employee's contributions made from 01.01.1993 onwards.

If the capital is paid **prior to the above-mentioned points in time**, it will be aggregated in as far it is constituted by employer's and employee's contribution made prior to January 1<sup>st</sup>, 1993 and the **progressive rate** will apply. The payment of capital constituted by employee's contributions made as from January 1<sup>st</sup> 1993 will be chargeable at the 33% rate and employer's contributions made as from January 1<sup>st</sup> 1993 will be chargeable at the progressive rate.

#### **B. Attribution of an annuity**

Where the group insurance is paid in the form of annuities, the progressive rate applies (taking into account the tax rebate for retirement pension savings).

A 3.55% social security contribution is levied on the surrender, for the benefit of the National Institute for Sickness and Invalidity Insurance.

#### **C. Participations in profits**

Participations in profit are tax **exempt** provided they are paid together with the benefits, annuities, capital or surrender values arising from the contract.

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<sup>103</sup> Are concerned here certain professional activities which are generally carried out for a short period of time only, such as professional sports. Cessation of professional activities at an early stage allows the making of a new professional start with the help of the capital received at the liquidation of the group insurance.

### D. Transfers

Where proceeds built up by a group insurance are transferred to another insurance company or to a pension fund, this transfer is not deemed to be a taxable payment or assignment, even when it occurs at the beneficiary's request.

A transfer of capital gains to an insurance company established abroad cannot qualify as a non-chargeable transfer.

### E. Tax treatment of group insurance contracts which have been the subject of withdrawals or of a mortgage

The capital and surrender value of group insurance contracts are converted into **notional annuities** where the following conditions are met:

- the chargeable person has made withdrawals from the policy or has used it to secure a mortgage loan;
- the partial surrenders are used to build, acquire or renovate a house situated in Belgium that is to serve as the taxpayer's only residence;
- the house is exclusively used for private purposes by the borrower and his family;
- if the contract is liquidated on the life of the assured, at least ten years must have gone by between the (partial) surrenders or the taking out of the mortgage loan and the liquidation of the contract;
- the payment of the surrender value must not occur more than five years before the termination date of the contract upon life.

The conversion into notional annuities applies to the first bracket of the capital loaned such as mentioned in Table 1.5, page 24 or of the surrender value of the group policy, on which partial surrenders were made or which was used to secure a mortgage loan.

Tax treatment and conversion rates are the same as for individual life insurance (<sup>104</sup>).

### **2.3.3. Inheritance tax**

Where the group insurance contract provides for benefits upon the death of the life assured, the proceeds received by the surviving spouse or, in the absence of a surviving spouse, by the children who have not reached the age of 21, are not deemed, under certain circumstances, to form part of the life assured person's estate (see art.8, last paragraph, 3°, Code of Inheritance Tax).

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<sup>104</sup> See above, page 210.

## TABLE OF CONTENTS

PREFACE	1
PART ONE DIRECT TAXATION	3
CHAPTER ONE PERSONAL INCOME TAX (PIT)	5
1.1. Chargeable persons ; location of tax liability	7
1.2. Determination of the net income (i.e. after deduction of expenses and losses)	7
1.2.1. Real estate income	7
1.2.2. Income from movable property	10
1.2.3. Miscellaneous income	12
1.2.4. Earned income	15
1.3. Expenses entitling to a tax relief	22
1.3.1. Long-term savings and investment in real property	23
1.3.2. Other expenses	28
1.4. Computation of the tax	31
1.4.0. General principles	31
1.4.1. Tax rates	32
1.4.2. Exempt income and deduction for dependents	32
1.4.3. Expenses entitling to a tax reduction	35
1.4.4. Tax reductions on replacement income	36
1.4.5. Tax reductions for foreign income	38
1.4.6. Separate taxation and computation of the principal	39
1.4.7. Allowance for withholding taxes, tax credit, advance payments and other allowable items	40
1.4.8. Increases and bonuses	41
1.4.9. Regional and municipal taxes	44
1.4.10. Additional crisis surcharge	44
1.4.11. Tax increases	45
ANNEX TO CHAPTER 1 REFORM OF THE PERSONAL INCOME TAX	47
1. Chargeable units	48
2. Determination of the net income (i.e. after deduction of expenses and losses)	49
2.1 Real estate income ( )	49
2.2 Income from movable property and miscellaneous income ( )	49
2.3 Flat-rate professional expenses	49
2.4 Assisting spouse deduction and marital quotient	50
3. Expenses entitling to a tax relief	50
3.1 Expenses borne with a view to energy-saving	50
3.2 Allocation of deductions and computation of total net income	51
4. Computation of the tax	51
4.1 Progressive rate	51
4.2 Tax exempt quotas	52
4.3 Tax reductions on replacement incomes	53
4.4 Tax credit	53
CHAPTER TWO CORPORATE TAXATION (CIT)	55
2.1. Tax period	55
2.2. Liability to corporate income tax	55
2.3. Tax base	55
2.3.0. Financial profit and taxable profit	56
2.3.1. "First operation" : the components of taxable profit	57
2.3.2. "Second operation": breakdown of profits according to their source	63
2.3.3. Tax reliefs at the "third operation"	63
2.3.4. The "fourth operation": participation exemption (PE) and exempt income from movable assets	63
2.3.5. The "fifth operation": deduction of previous losses	66
2.3.6. "Sixth operation": the investment allowance	66

## TABLE OF CONTENTS

---

2.4.	Computation of the tax	66
2.4.1.	Common rate	66
2.4.2.	Reduced rates	67
2.4.3.	Tax credit	68
2.4.4.	Foreign source income	68
2.4.5.	Crisis surcharge	68
2.4.6.	Tax increase for lack or insufficiency of advance payments	69
2.4.7.	Crediting of withholding taxes	69
2.4.8.	Special tax regimes	70
Annex TO chapter 2 EMPLOYEE EQUITY PARTICIPATION AND EMPLOYEE PARTICIPATION IN PROFITS AND ENTERPRISE RESULTS		71
	Principles of the new system	71
	Taxation system	71
CHAPTER THREE PROVISIONS COMMON TO PIT AND CIT		73
3.1.	Tax regime of depreciation	73
3.2.	Investment allowance	74
3.2.1.	Investments taken into account	74
3.2.2.	Calculation base	75
3.2.3.	Applicable rates	75
3.2.4.	Arrangements	76
3.3.	Fiscal impact of regional aid	77
3.3.1.	Inclusion of aid in the taxable base	77
3.3.2.	Doubling of linear depreciation	77
3.3.3.	Exemption from withholding tax on real estate income	77
3.4.	Tax arrangements for capital gains	77
3.4.1.	Capital gains realized during exploitation	77
3.4.2.	Capital gains realized upon the cessation of a professional activity	78
3.5.	Exemption for certain categories of additional staff	79
3.6.	Exemption for additional SME personnel	79
CHAPTER FOUR LEGAL ENTITIES INCOME TAX (LEIT)		81
4.1.	Liability	81
4.2.	Taxable base and levy of the tax	81
4.2.1.	Basic principle	81
4.2.2.	Taxation of income from movable property	81
4.2.3.	Six cases of putting items on the tax roll	81
CHAPTER FIVE WITHHOLDING TAXES AND ADVANCE PAYMENTS		83
5.1.	Withholding tax on real estate income	83
5.2.	Withholding tax on income from movable property (T.Mov.)	85
5.2.1.	On dividends	85
5.2.2.	On interests	86
5.3.	Withholding tax on earned income	88
5.3.1.	Employees' remunerations	88
5.3.2.	Holiday pay and other exceptional allowances	91
5.3.3.	Salary arrears	92
5.3.4.	Compensations for termination	93
5.3.5.	Attendance fees, commissions	93
5.3.6.	Students	93
5.3.7.	Young workers	94
5.3.8.	Company managers	94
5.4.	Advance payments (AP)	95



## TABLE OF CONTENTS

---

PART TWO INDIRECT TAXATION	97
CHAPTER ONE VALUE ADDED TAX (VAT)	99
1.1. Definition	99
1.2. Persons liable to VAT and legal persons that are not liable	100
1.3. Taxable transactions	101
1.3.1. Supply of goods	101
1.3.2. The supply of services	102
1.3.3. Importation	103
1.3.4. Intra-Community acquisition of goods	103
1.4. Exemptions	105
1.4.1. Exportation, importation, intra-Community deliveries and acquisitions and international transport	105
1.4.2. Other exemptions	106
1.5. The tax basis	106
1.6. The VAT rates	107
1.7. The deduction of VAT (or deduction of the input tax)	108
1.8. Submission of returns and payment of the tax	109
1.9. Special systems	110
1.9.1. The special system for small enterprises	110
1.9.2. The special system for certain agricultural enterprises	110
1.9.3. Other special systems	110
1.9.4. The special VAT return	111
CHAPTER TWO REGISTRATION DUTIES, MORTGAGE DUTIES AND COURT FEES	113
2.1. Registration duties	113
2.1.1. Proportional registration duties	114
2.1.2. Specific fixed duties	117
2.1.3. General fixed duty	117
2.2. Mortgage duty	118
2.3. Court fees	118
CHAPTER THREE ESTATE DUTIES	119
3.1. Inheritance tax and transfer duty upon death	119
3.1.1. Generalities	119
3.1.2. Rates and particular provisions per Region	120
3.2. The compensatory tax for inheritance tax	127
3.3. The annual tax on unit trusts, credit companies and insurance companies	127
3.4. The annual tax on Co-ordination centres	127
CHAPTER FOUR STAMP DUTIES	129
CHAPTER FIVE TAXES ASSIMILATED TO STAMP DUTIES	131
5.1. Tax on stock-exchange and carry-over transactions	131
5.1.1. Tax on stock-exchange transactions	131
5.1.2. Taxes on carry-over	133
5.2. Tax on delivery of bearer securities	133
5.3. Annual tax on insurance contracts	134
5.4. Annual tax on profit-sharing schemes	135
5.5. Tax on long-term savings	135
5.6. Bill-posting tax	136
CHAPTER SIX CUSTOMS PROCEDURES UPON IMPORTATION, EXPORTATION AND TRANSIT	137
6.1. Duties upon importation	137
6.1.1. Tax basis of customs duties upon importation = generally the customs value, sometimes the quantity	137
6.1.2. Tariff of import duties	138
6.2. Customs approved treatment	138
6.2.1. General	138
6.2.2. The Single Administrative Document	139
6.2.3. Clearance office	139
6.2.4. Release for free circulation and for consumption	139
6.2.5. Customs procedures involving suspension of duties and taxes on importation	143
6.2.6. Exportation of goods	147
6.2.7. Refund or remission of the duties upon importation, excise duty, special excise duty and VAT	147

## TABLE OF CONTENTS

CHAPTER SEVEN EXCISE DUTIES	149
7.1. Definition	149
7.2. Classification of excise duties	149
7.3. Tax base	150
7.4. General rules governing the production, processing, holding and movement of excise goods	150
7.4.1. The production, processing and holding of excise goods	151
7.4.2. Movement of excise goods	151
7.5. Inspection	152
7.6. Rates	154
7.6.1. Mineral oils	154
7.6.2. Alcoholic beverages	156
7.6.3. Manufactured tobacco	159
7.6.4. Non-alcoholic beverages	160
7.6.5. Coffee	161
7.6.6. Inspection fee on domestic fuel oil	161
CHAPTER EIGHT THE LEVY ON ENERGY	165
8.1. Definition	165
8.2. Products subject to the levy and rates to be applied	165
8.2.1. Motor fuels	165
8.2.2. Fuels for heating purposes	166
8.2.3. Electricity	166
8.3. Liability for payment	166
8.4. Exemptions	167
8.5. Inspection	167
CHAPTER NINE ECOTAXES	169
9.1. Generalities	169
9.2. Rates and exemptions	170
9.2.1. Drink containers	170
9.2.2. Disposable cameras	171
9.2.3. Batteries	171
9.2.4. Packages of certain types of inks, glues, solvents and pesticides for professional use	172
9.2.5. Pesticides	172
9.3. Taxation of existing stocks	173
CHAPTER TEN TAXES ON DRINKING ESTABLISHMENTS	179
10.1. Opening tax, annual tax and five-year tax on the sale of fermented drinks	179
10.2. Business licence tax on establishments selling liquors	180
CHAPTER ELEVEN TAXES ASSIMILATED TO INCOME TAXES	181
11.1. Road tax	181
11.1.1. Taxable vehicles	181
11.1.2. Exemptions	181
11.1.3. Tax base	182
11.1.4. Indexation of the rates	182
11.1.5. Rates	182
11.1.6. Tax abatements	185
11.1.7. Additional road tax	185
11.1.8. Surcharge in favour of the municipalities	186
11.1.9. Summary table of the taxes on motor cars, twin-purpose cars and mini-buses	186
11.2. Excise compensating tax (ECT)	187
11.3. The Eurosticker	188
11.3.1. Definition	188
11.3.2. Vehicles subject to the tax	188
11.3.3. Exempt vehicles	189
11.3.4. Rates	189

## TABLE OF CONTENTS

---

11.4.	The tax on the entry into service	189
11.4.1.	Taxable vehicles	189
11.4.2.	Exemptions	190
11.4.3.	Tax base	190
11.4.4.	Rates	190
11.5.	Betting and gambling tax (BGT)	193
11.6.	Amusement machine licence duty	193
11.7.	Tax on employee equity participation and employee participation in profits and enterprise results	193
PART THREE SOME SPECIAL TAX REGIMES		195
CHAPTER ONE SPECIAL CORPORATE INCOME TAX REGIMES		197
1.1.	Co-ordination centres	197
1.2.	Distribution centres	198
1.3.	Service centres	199
1.4.	Employment zones	201
1.5.	Closed-end investment trusts and open-end investment trusts	202
1.5.1.	Taxation of UCITs	202
1.5.2.	Allocation of revenue	202
1.5.3.	Revenue allocated to resident natural persons	202
1.5.4.	Revenue allocated to resident companies	203
1.5.5.	Tax on the acquisition, sale or change of department	203
CHAPTER TWO PENSION SCHEMES AND LIFE INSURANCES		205
2.1.	Pension schemes	205
2.1.1.	Forms of pension schemes	205
2.1.2.	The tax regime of deposits	205
2.1.3.	Taxation upon withdrawal	206
2.1.4.	Inheritance tax	207
2.2.	Individual life insurance	208
2.2.1.	Tax treatment of premiums paid	208
2.2.2.	Tax treatment of the benefits	209
2.3.	Group insurances	212
2.3.1.	Tax treatment of premiums paid	212
2.3.2.	Tax treatment of the benefits	213
2.3.3.	Inheritance tax	214



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