

## PREFACE

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By publishing the "Tax Survey", the Research and Information Department of the Federal Public Service 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 chapters deal with withholding taxes and advance payments.

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 (advanced ruling regimes, co-ordination centres, UCITs, etc.) and the tax regimes applicable to long term savings (pension schemes and life insurance contracts).

The Tax Survey does not deal with procedures (returns, inspection, disputes).

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

- **to 2004 income (tax year 2005)** in the matter of direct taxation, with the exception of withholding taxes (part I, chapters 1 to 4 and part III);
- **on January 10th, 2005** as far as indirect taxation (part II) and withholding taxes (part I, chapters 5 to 7) are concerned.

The authors of this publication are E. DELODDERE (Part II), S. HAULOTTE 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. The Tax Survey can also be referred to on our website at [www.docufin.fgov.be](http://www.docufin.fgov.be), where it can be downloaded as a pdf-file.

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**CHAPTER ONE**  
**PERSONAL INCOME TAX (PIT)**

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*What is new ?*

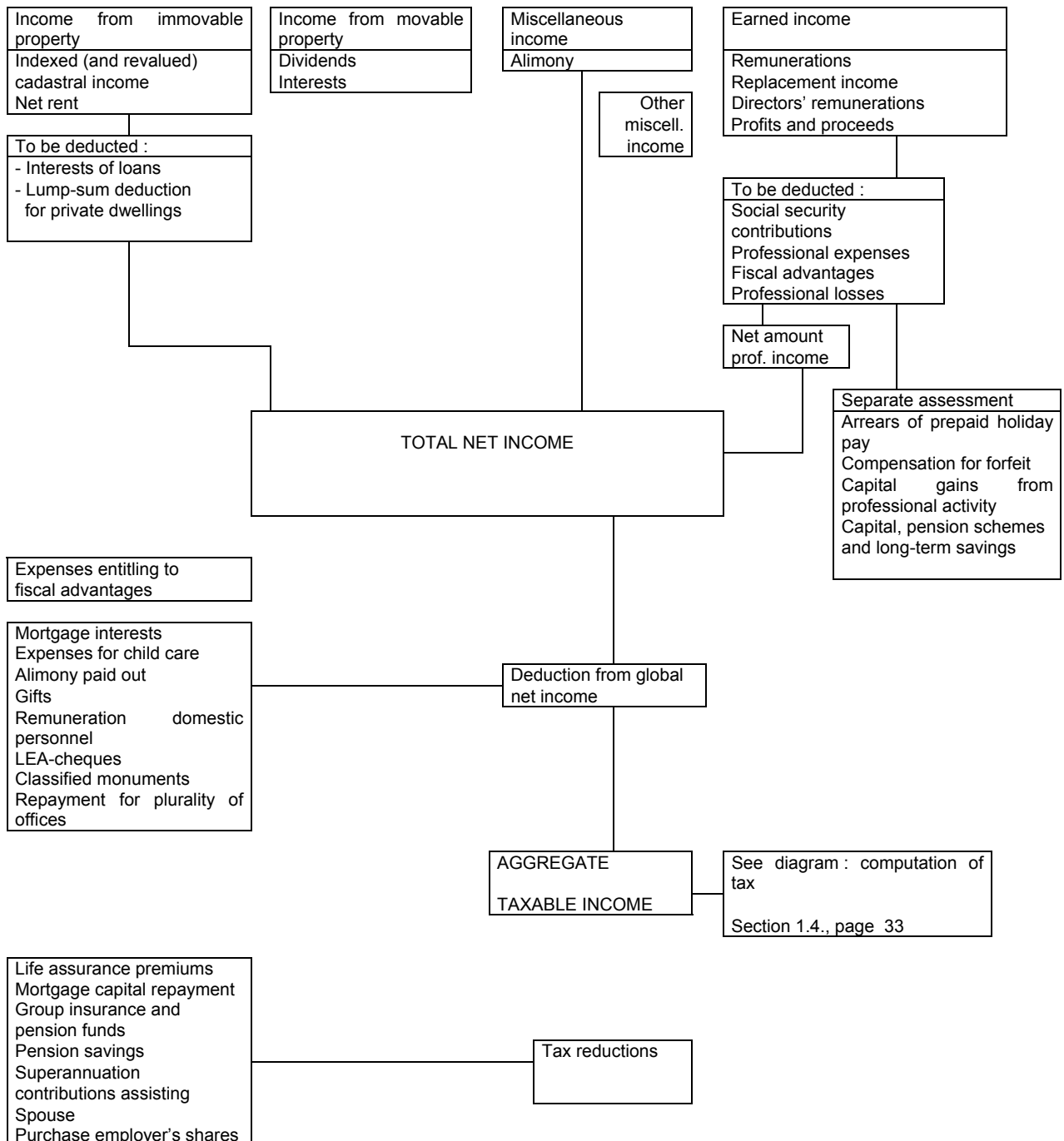
- *The tax reform is come into force in its entirety. The tax credit in respect of low income from professional activities has been abolished since 2004, as far as wages are concerned.*

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 entitling 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). Step four also deals with the *tax credit* in respect of low income from professional activities, introduced by the tax reform.

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 (01.01.2005 for 2004 income) is the "tax municipality", which determines the rate of the local surtax.

The taxation in respect of civil partnerships has been thoroughly modified since 2004. Separate taxation of the partners' income has become the rule, but the assessment is made on the aggregated income, the partners thus keeping the benefits of the marital quotient and of income allocations or tax exemptions.

Another fundamental change is the assimilation of legal cohabitants to spouses. Hereafter the word "spouse" may also have the meaning of "legal cohabitant".

As regards spouses, aggregated assessment is the rule. This shows in the common return. Separate assessments, and thus separate returns, apply however in the following cases:

- in respect of the year of marriage or of the year of registration of the legal cohabitation,
- in respect of the year of divorce or (official) cessation of the legal cohabitation,
- as from the year following the year of actual separation or actual cessation of legal cohabitation, provided the separation has remained effective throughout the year.

In respect of the year of decease, the surviving spouse, or the heirs in case both spouses have deceased, may choose between an aggregate and a separate assessment; notice of the choice shall be given at the time of the return.

### **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 the real property is established separately for each spouse and the jointly owned property is apportioned on a fifty-fifty basis between the spouses.

The taxable amount of real estate income is determined, according to the case, 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 2004 the adjustment coefficient is 1.3604.

The taxable income depends on the purpose it is given. Table 1.1 lists the possible purposes of **built movable property**.

*Table 1.1.  
Income from real property : determination of the taxable amount*

	Use the real property is put to ?	Taxable income
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 3.39 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 (1).

The deductions a spouse is entitled to, may exceed the amount of his/her taxable real property income. In this case the balance is deducted from the real estate income of his/her partner within the limits thereof; indeed, the total real estate income cannot be negative.

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

A lump-sum deduction is granted **per spouse** on the cadastral income of a dwelling house or on the part of the real property income in respect of which the spouse is chargeable to tax. This deduction is inflation adjusted according to the same arrangements as the cadastral income. For 2004 income, this deduction amounts to € 4,080, with the following increases :

- € 340 for each dependent person,
- € 340 for each child having been dependent on the tax payer when living in the house in question.

These increases are apportioned between the spouses in proportion to their cadastral income. 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 € 28,630, an **additional deduction** is awarded which is equal to half the difference between the cadastral income and the standard deduction. Where a common assessment is established, this rule applies to each spouse.

Where an assessment is made on a single person, the total deduction cannot exceed the cadastral income in respect of which it is granted.

Where a common assessment is established, this rule applies jointly to both spouses. When the housing deduction one of the spouses is entitled to exceeds his taxable cadastral income, the balance is deducted from the other spouse's cadastral income within the limits of the amount thereof.

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1 See page 25.

### Example

- a. A childless couple jointly owns a dwelling house whose indexed cadastral income amounts to € 1,000. Their remaining net income amounts respectively to € 8,000 and € 7,000. Each spouse is entitled to a deduction limited to his/her taxable cadastral income, i.e. € 500.
- b. Same situation as in a), but now the indexed cadastral income amounts to € 5,000. Each spouse is entitled to a deduction limited to his/her taxable cadastral income, i.e. € 2,500.
- c. A couple with three children jointly owns a dwelling house whose indexed cadastral income amounts to € 10,000. The claimant's professional income is € 25,000, his spouse's is € 40,000. The standard deduction is computed as follows:

Claimant :  $€ 4,080 + (3 \times € 340)/2 = € 4,590$

Claimant's spouse:  $€ 4,080 + (3 \times € 340)/2 = € 4,590$ .

The taxable remainder is € 410 for each spouse. The claimant is entitled to an additional deduction of € 205. His spouse, whose income exceeds € 28,630, is not entitled to this additional deduction.

The deduction can also apply to another building 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.

Moreover the tax credit is limited to the tax due.

#### B. Some special provisions

- Real estate income also includes sums obtained through the constitution or the transfer of long lease rights, building rights, 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 5.75 times the cadastral income stops being considered income from immovable property and becomes a director's remuneration (2).

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2 The limit is actually five thirds (not rounded) of the « revalued » cadastral income, i.e. multiplied by 3.45.

- 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.
- Where a **furnished** building is **leased** and the contract does not provide for separate rents for the building and for the furniture, 60% of the total rent is deemed to concern the building and is a taxable real estate income, whereas the remaining 40% is deemed to concern the furniture and constitutes an income from movable assets (3).
- Where 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.

Since 2004 the amount of the chargeable movable income has been established for each spouse separately. Income from jointly owned movable property is apportioned according to the law of property.

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

As a general rule, dividends, income from savings certificates, 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 (4);

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

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

- 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 € 1,520 of income from ordinary savings accounts, **per household**;
- the first bracket of € 150 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 and before deduction of recovery and maintenance costs.

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 (5).

Since 2004 the amount of the taxable miscellaneous income has been determined separately for each spouse. Any shared income is apportioned according to the law of property.

#### **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.

#### **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 (6) 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 (7) are only taxable in as far as they exceed € 3,050.

5 Rates : see Table 1.15, page 41.

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

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

### **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 net amount received.

### **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 (8),
- 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 donation.

The taxable amount is determined on the basis of the transfer price, from which are 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 jointly 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 made less than eight years after the acquisition by the grantor for a valuable consideration.

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8 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 are 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.

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 (9).

#### **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;

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9 The revaluation only concerns acquisitions realized before 1949.

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.

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.

*Table 1.3.*

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

Lump sum deduction of professional expenses	Deduction of actual professional expenses
<u>Where a means of public transport is used:</u> the total amount of the allowance or reimbursement made by the employer	The allowance made by the employer is liable to tax. These expenses are deductible. In the absence of evidence, the deductible expenses are estimated at € 0.15 per kilometre for the distance between home and work, this distance being limited to 50 kilometres.
<u>Where a collective means of transport is provided by the employer or a group of employers, or in the case of carpooling :</u> the allowance is exempted, pro rata temporis, up to the amount of a weekly first class train ticket between work and home	
<u>Other means of transport :</u> the allowance is exempted up to € 150	The allowance made by the employer is liable to tax. Actual expenses : maximum € 0.15 per kilometre.



The mileage allowance for cycling commuters is also exempt from tax up to € 0.15 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 € 750.

As regards remunerations relating to activities performed in the framework of **local employment agencies, € 3.72 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** (10). 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 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.

The Act of December 24, 2002 allows for an extension of the period during which the right of option can be exercised without additional fiscal burden.

In order to be eligible for this for this extension, the options must meet the following conditions :

- they must have been granted, i.e. not have been abandoned, within 60 days after the offer;
- they must have been given between November 2<sup>nd</sup>, 1998 and December 31<sup>st</sup>, 2002;
- they have not been exercised yet and the option period is still running;
- they beneficiary must have given his consent and the Tax Administration must have been informed thereof by the enterprise giving the options.

Where all these conditions are met, the option period is extended with not more than 3 years.

10 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.

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 an incapacity for work or an 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.

### 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 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 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 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 50 kilometres in the absence of evidence. Where a chargeable person proves higher real costs, he may deduct the latter entirely, but he is not allowed to combine the flat € 0.15 per kilometre with the actual expenses in respect of the distance exceeding 50 kilometres.

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 (11);
- 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;
- sums actually paid out to collective day care facilities by a taxpayer receiving profits (i.e. a merchant or a person practising a liberal profession).  
In fact it concerns 'enterprise crèches'. This new regulation also applies to companies and is detailed in chapter 3, p. 68.

Are not deductible:

- personal expenses;
- fines and penalties;
- expenses exceeding the professional requirements to an unreasonable extent;

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11 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 67.

## DIRECT TAXATION

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- expenses relating to clothing, with the exception of special professional clothing;
- 37.5% of restaurant expenses;
- 50% of 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 (12).

For **company directors** the flat-rate deduction is set at 5% of the basis of calculation, with a maximum of € 3,050.

The same € 3,050 limit applies to the flat-rate expenses which may be awarded to **employees** and **members of a liberal profession** (13); these are calculated according to the scale below.

*Table 1.4*  
*Flat-rate allowable professional expenses*

Basis of calculation in €			Professional expenses	
			lower limit	above the limit
0	to	4,570	0	25%
4,570	to	9,080	1,142.50	10%
9,080	to	15,110	1,593.50	5%
15,110		and more	1,895.00	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.

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12 That is to say the deductible part of contributions to recognized mutual insurance companies; see above, page 18.

13 This maximum is reached at a basis of calculation of € 53,610.

*Table 1.5.  
Additional allowable professional flat-rate expenses*

Distance between home and work		Additional fixed amount
75 km	-	100 km
101 km	-	125 km
126 km		and more
		90
		150
		210

#### DEDUCTION OF EXPENSES

Where the taxable earned income includes income which is taxable separately (14), 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.

#### 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 (15).

14 For example arrears, compensation for loss of employment and certain capital gains.  
15 See page 42.

### 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.

This allocation is only allowed where the spouse who is to receive the quota has not earned a professional income amounting to more than € 10,600 (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 (16).

#### 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 € 8,160.

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.

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16 See below, page 28.  
22

**QUALIFICATION OF THE ALLOCATED INCOME**

The nature of the allocated income is determined according to a new rule: the original qualification subsists and the assisting spouse quota and marital quotient are allocated proportionally to the different categories of income received by the allocating spouse. Where only one of the spouses enjoys an income, income allocated in application of the marital quotient is deemed to be earned income if that spouse is a wage-earner and is deemed to be a pensioner if the spouse concerned is a pensioner.

**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 » (17),
- a tax reduction at the marginal rate.

**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 :

- the contract was signed by the taxpayer before the age of 65,
- 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 € 1,520 of earned income, and to 6% beyond;
- with a maximum of € 1,830.

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17 This « special average rate » is explained hereafter at page 37.

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 (18);
- 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.

*Table 1.6  
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
1989	49,578.71
1990	51,115.64
1991	52,875.69
1992 to 1998	54,536.58
1999	55,057.15
2000	55,652.10
2001	57,570.00
2002	58,990.00
2003	59,960.00
2004	60,910.00

**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 (19) 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 1.6.

18 i.e. the house whose cadastral income is entitled to the flat-rate deduction. See above, page 9.

19 Hereinafter, contracts taken out as of 1989 in exchange of existing contracts are to be assimilated to contracts concluded before 1989.



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 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.

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.

### 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 € 24,120 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 amount of the maximum eligible loans is the figure in Table 1.6, i.e. € 60,910. In respect of renovation work, this ceiling is halved and rounded to € 30,460. 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 2004, the eligible amount of the loan shall not exceed :

*Table 1.7  
Maximum qualifying amount for the computation of the additional  
deduction of mortgage interests*

Number of dependent children	New construction	Renovation
0	60,910	30,460
1	63,960	31,980
2	67,000	33,500
3	73,090	36,550
4 and more	79,180	39,570

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

- from the first (20) 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.

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20 The first year is the one as from which the cadastral income is taxable.

*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 5.5%.

The cadastral income is € 1,500, (i.e. € 2,040 after indexation) and the house is registered in name of both spouses. For the first year, the remainder of the interest not covered by the standard deduction is € 3,460. After taking into account the ceiling on the loan (€ 67,000 with respect to a new construction, assumed there two dependent children), the additional deduction will allow them to deduct 80% of € 2,318, i.e. € 1,855 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).

	Cadastral income	Amount of interest	Standard deduction	Non-deducted balance	After application of ceiling	Deductible quota	Additional deduction granted
1	2,040	5,500	2,040	3,460	2,318	80%	1,855
2	2,080	5,500	2,080	3,420	2,291	80%	1,833
3	2,120	5,500	2,120	3,380	2,265	80%	1,812
4	2,170	5,500	2,170	3,330	2,231	80%	1,785
5	2,210	5,500	2,210	3,290	2,204	80%	1,763
6	2,250	5,500	2,250	3,250	2,178	70%	1,524
7	2,300	5,500	2,300	3,200	2,144	60%	1,286
8	2,340	5,500	2,340	3,160	2,117	50%	1,059
9	2,390	5,500	2,390	3,110	2,084	40%	833
10	2,440	5,500	2,440	3,060	2,050	30%	615
11	2,490	5,500	2,490	3,010	2,017	20%	403
12	2,540	5,500	2,540	2,960	1,983	10%	198

D. Pension saving schemes (21)

Sums assigned to a pension savings scheme entitle to a tax reduction at the "special average rate". The amount entitling to the reduction is limited to € 610 per spouse.

E. Group insurance and pension funds (22)

Personal premiums for group insurance contracts and pension funds entitle to a **tax reduction** at the "special average rate" 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.

21 The fiscal regime of pension savings schemes is dealt with more explicitly in Part 3 of the Survey; see pages 207 and following.

22 The fiscal regime of group-insurance is dealt with more in explicitly in Part 3 of this Survey. See pages 207 and following.

### F. Purchase of employers' shares

The purchase of shares entitles to a tax reduction at the "special average rate" only if the 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 € 610 for each spouse fulfilling these conditions. This deduction cannot be cumulated (23) with the deduction for pension savings schemes.

### G. Additional pension contributions by assisting spouse

A self-employed taxpayer's spouse can be allocated a portion of the latter's income (24). 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 »**.

### **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 per day of care and per child.

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

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23 The incompatibility is evaluated for each spouse separately.

24 See supra, page 22.

28

**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 € 30 per beneficiary institution. The total amount thus deductible cannot exceed 10% of the global net income of the spouse nor € 304,550 per spouse. 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 € 3,050.

The deduction is limited to 50% of the salary, with an absolute maximum of € 6,090.

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 2004; 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; the allowed expenses may not exceed € 2,200.

### 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 € 30,460.

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.

### H. Expenses borne for work aimed at energy-saving

The granting of a fiscal advantage for work aimed at energy-saving is one of the new measures in the tax reform.

This advantage is granted in the form of a tax reduction and the rate thereof depends on the nature of the expense.

**Table 1.8.**  
**Tax reduction for work aimed at energy-saving**

Typ 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%

The deduction applies to each dwelling owned by the tax-payer. Expenses taken into consideration as professional expenses or entitling to the investment allowance are rejected. The work must be executed by a registered building contractor. The expenses are taken into consideration up to the amount of € 610 per dwelling.

*I. Expenses for renovation in zones of 'positive metropolitan policy'*

Are taken into consideration expenses related to services performed by registered contractors with a view to transformation, renovation, improvement, repair or maintenance (but not cleaning) of a house which is the taxpayer's sole dwelling-house at the time the work is being started. In order to be entitled to this advantage

- the dwelling must have been in use for at least 15 years ;
- the total cost of the work may not be less than € 2,500 (incl. VAT) (not indexed), i.e. € 3,050, in respect of 2004 income ;
- the dwelling must be situated in a so-called 'zone of positive metropolitan policy'. The list of these zones was published in the Royal Decree of June 4<sup>th</sup>, 2003 and can be checked on the website of FPS Finance (25).

Expenses taken into consideration as professional expenses are rejected. Are also rejected, expenses entitling to the investment allowance and the expenses relating to the maintenance and restoration of classified monuments described sub F.

The tax reduction amounts to 15% of the expenses actually borne but cannot exceed € 500 (not indexed), i.e. € 610 for the 2004 income, per dwelling.

Expenses borne with a view to renovation may give rise to a revaluation of the cadastral income. The entering into force of the revaluation has been postponed for six years but only inasmuch as PIT is concerned and not the withholding tax on real estate income.

25 <http://www.fisconet.fgov.be> - impôts directs – législation – code des impôts sur les revenus 92 – CIR 92 exercice 2005 – Art 145<sup>25</sup>.

In the case of aggregated taxable income, the tax reduction is granted proportionately to the part of each of the spouses in the cadastral income of the dwelling house the work is being done on.

### J. Subscription to bonds issued by the Sustainable Economy Fund

The tax advantage is granted for subscription to registered bonds with a maturity of 60 months issued by the Sustainable Economy Fund. It is granted only once per tax year and per subscription.

The subscriber must keep the bonds in his possession for at least 60 months. If he doesn't, the tax reduction is revoked proportionately to the missing number of months. The new owner is not entitled to the tax reduction (26).

The tax reduction amounts to 5% of the expenses actually borne but cannot exceed € 210 (not indexed), i.e. € 260 for 2004 income.

### K. Start-up Fund

This tax reduction is granted for subscription to registered bonds with a duration of at least 60 months, issued by the Start-up Fund, which was created in order to facilitate SMEs' access to long term financing. This advantage is granted only once per tax period and per subscription.

The subscriber must keep the bonds in his possession for at least 60 months. If he doesn't, the reduction is revoked proportionately to the number of missing months. The new owner is not entitled to the tax reduction (27).

The reduction amounts to 5% of the expenses actually borne but cannot exceed € 210 (not indexed), i.e. € 260 for 2004 income.

Each of the spouses is entitled to a reduction with respect to the bonds registered in his/her name.

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26 The tax reduction is not revoked where the transfer of the bonds is subsequent to the death of the subscriber.

27 The tax reduction is not revoked where the transfer of the bonds is subsequent to the death of the subscriber.



## 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 expenses entitling to a tax reduction (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.)
+	tax increase (1.4.10.)
=	<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.*

Since 2004 the tax has been fully computed per spouse.

### 1.4.1. Tax rates

The rates applicable to 2004 income are as follows :

*Table 1.9  
Progressive rate*

Bracket of taxable income			Marginal rate
0	-	6,950	25 %
6,950	-	9,890	30 %
9,890	-	16,480	40 %
16,480	-	30,210	45 %
30,210		and more	50 %

### 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 € 5,660, both for a single person and for a spouse. The exemption is increased by € 1,200 where the taxpayer is disabled. This is also true where the taxpayer's spouse is disabled.

#### 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 : 01.01.2005) he is a member of the family (28),
- he has not had personal means of subsistence exceeding a net amount of € 2,070 (29),
- he has not been in receipt of any remuneration which was a business expense for the taxpayer.

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.

28 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.

29 That amount is raised to € 3,590 for an isolated person's dependent children, and to € 4,140 for an isolated person's disabled dependent children.

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, including arrears of maintenance.

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 € 350 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 1.10.  
Exemptions for dependent children*

Rank of the child	Total exemption	Exemption for that child
1	1,200	1,200
2	3,090	1,890
3	6,940	3,830
4	11,220	4,280

For any child after the fourth, the exemption amounts to € 4,280 per child.

An additional exemption of € 450 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 € 23,000 which, after all deductions, breaks down as follows:*

-	taxpayer	:	€ 15,000
-	spouse	:	€ 10,000

*The taxpayer is awarded an exemption of € 12,600 which is calculated as follows:*

-	exemption for the spouse	:	€ 5,660
-	three dependent children	:	€ 6,940

*This exempted bracket comprises the first two brackets of the progressive rate (Table 1.9).*

*The remaining income is taxed at 40% up to € 16,480, i.e. € 3,880, and at 45% above this limit.*

*The spouse is entitled to an exemption of € 5,660. So € 1,290 will be taxed at 25% and the remainder will be taxed at the succeeding tax bracket(s).*

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 being added to the other deductions if there are any.

When exemptions for dependent children can not be offset because of a too low income, they give rise to a reimbursable tax credit. The double exemption for disabled children and the additional exemption for children under three are to be taken into account. The reimbursable tax credit is computed at the marginal rate and limited to € 350 per dependent child.

**C. Special family situations**

The other exemptions are as follows :

-	other dependent persons	€ 1,200
-	disabled dependent persons (30)	€ 1,200
-	single person with dependent children	€ 1,200
-	spouse whose income does not exceed € 2,010 : in respect of the year of marriage or the year of declaration of legal cohabitation, provided the assessment is made per taxpayer	€ 1,200

30 With the exception of children.  
36

### 1.4.3. Expenses entitling to a tax reduction

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

Table 1.11 lists these expenses, the rate and – if necessary - the maximum amount of the tax reduction.

*Table 1.11.  
Expenses entitling to a tax reduction*

<b>Expenses entitling to reduction</b>	<b>Rate and ceiling of reduction</b>
Housing-saving (see definition at 1.3)	Marginal rate
Individual life insurance premiums and mortgage capital repayments, when <b>not</b> considered as housing-saving	special average rate
LEA cheques and service cheques	
Personal premiums for group insurance contracts or pension funds	
Sums paid for the acquisition of employers' shares	
Sums paid for pension savings schemes	
Work aimed at energy-saving	15% or 40% ; see Table 1.8
Expenses for renovation in 'zones of positive metropolitan policy'	15% of the expenses Maximum € 610
Bonds issued by Sustainable Economy Fund	5% of the expenses Maximum € 260
Bonds issued by Start-up Fund	5% of the expenses Maximum € 260

The “**special average rate**” is 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%.

### 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 per spouse or per household, according to the nature of the income. 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 proportionately 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 2004, the amounts of the basic reductions are :

**Table 1.12.**  
**Basic amounts of tax reductions for replacement income**

Categories of income	Base	Single person	Spouse
Pensions	spouse	1,637.96	1,637.96
Early retirement pensions regime A (*)	spouse	1,637.96	1,637.96
Early retirement pensions regime B (**)	household	1,637.96	1,912.53
Standard unemployment benefits	household	1,637.96	1,912.53
58-plus unemployment benefits (***)	household	1,637.96	1,912.53
Sickness/invalidity	spouse	2,102.59	2,102.59
Other replacement incomes	spouse	1,637.96	1,637.96

(\*) Early retirement pensions come into force before 01.01.2004.

(\*\*) Early retirement pensions come into force as from 01.01.2004.

(\*\*\*) These are benefits granted to unemployed persons having reached the age of 58 as of January 1st of the tax year (in this case : 01.01.2005) 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.

This limitation applies per spouse, except as regards unemployment benefits and new early retirement pensions (regime B), where they are determined on the base of the household income.

When applied per spouse, the limitation is computed using the following ratio:

$$\frac{\text{net amount of the income entitling to reduction}}{\text{net income before application of the marital quotient}}$$

### C.    « Vertical » limitation

This restriction is related to the total aggregate taxable income of either the spouse or the household. 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 1.12 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 € 18,150; it then diminishes gradually and is reduced to one third of its amount as from an ATI of € 36,300.

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

*Table 1.13.  
Vertical limitation of the tax reductions : general rule*

<i>Brackets of ATI</i>	<i>Limitation of the reduction</i>
Less than € 18,150	$R' = R$
Between € 18,150 and € 36,300	$R' = [R * 1/3] + [R * 2/3 * (36,300 - ATI) / 18,150]$
More than € 36,300	$R' = R * 1/3$

This limitation is a function of the household income where 58-plus unemployment benefits and new early retirement pensions (regime B) are concerned. In the other cases, i.e.

- pensions
- legal sickness and invalidity insurance benefits
- any other replacement income except standard unemployment benefits (see further),

it is determined per spouse.

#### **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 € 18,150; it then diminishes gradually and is no longer granted when the ATI of the household amounts to € 22,600.

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

**Table 1.14.**  
**Vertical limitation of the tax reductions : standard unemployment benefits**

<i>Brackets of ATI</i>	<i>Limitation of the reduction</i>
Less than € 18,150	R'= R
Between € 18,150 and € 22,600	R': $R*(22,600 - ATI) / 4,450$
More than € 22,600	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 58-plus unemployed persons	€ 13,415.29
- in respect of unemployment benefits, pensions, « new » early retirement pensions and other forms of replacement income	€ 12,206.35
- in respect of sickness and invalidity insurance benefits	€ 13,562.61

**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.

These reductions are determined per spouse.



**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., page 12.

**MISCELLANEOUS INCOME**

The taxable amount of miscellaneous incomes has been detailed above (31). The tax rates applying to these incomes are the following :

**Table 1.15.**  
**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**

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 1.16.  
Separate taxation of earned income*

Type of income	Tax rate
Salary arrears, replacement income arrears	the previous year's average rate
Gross dismissal compensation > € 750	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. Tax credits and withholding taxes**

**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 per spouse.

The amount of the tax credit may not exceed the part of the personal income tax relating to the net 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. Tax credit on low income from professional activities**

The tax credit is computed on the net amount of the activity income, i.e. the amount of the earned income not being a replacement income, a wage or a separately taxed income, after deduction of the actual or flat rate professional expenses.

Income from an independent activity taken on as a sideline is not taken into account either.

The tax basis is computed before taking into account the marital quotient and the allocation of the assisting spouse quota.

Taxpayers subject – entirely or partially - to flat rate taxation, are not entitled to the tax credit.

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

The tax credit, calculated in function of the income (I) and of the upper (L<sub>2</sub>) and lower (L<sub>1</sub>) limits of the tax brackets in the scale, is computed as follows :

**Table 1. 17**  
**Scale of tax credit**

Brackets of net income (€)		Amount of tax credit (€)
0	3,970	0
3,970	5,300	$540 \times (I-L_1)/(L_2-L_1)$
5,300	13,250	540
13,250	17,230	$540 \times (L_2-I)/(L_2-L_1)$
17,230	and more	0

The tax credit is reduced proportionately to the part of the activity income in the total net earned income.

**C. Offsetting**

Are successively set off against the « principal » (32) :

- 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,

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32 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.

- the fixed foreign tax credit (FFTC), inasmuch as it relates to securities invested in a professional activity,
- the tax credit for increase of “own assets”.

If these offsets exceed the amount of the tax due to the State, the amount in excess is not creditable against additional taxes and is not refundable.

Are then set off:

- the tax credit on low activity income;
- the tax credit computed on the portion of the exempted amounts for dependent children that exceeds the tax due.

The remainder is creditable against the additional taxes and, if it amounts to at least € 2.50, it is refundable.

Are next set off, the refundable withholding taxes (withholding tax on movable property and withholding tax on earned income) and 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. Since 2004 the assisting spouse quota has been considered an income from a self-employed activity.

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.

In order not to encumber the assisting spouse with the obligation to make advance payments, a new ruling has been introduced which assures the transfer of advance payments made by the allocating spouse. So advance payments are used

- to make up the allocating spouse's tax increases
- the remainder will be used to make good tax increases due by the spouse who is allocated an assisting spouse quota
- the remainder, if any, is used to compute tax bonuses.

Increases and bonuses are calculated on the basis of a reference rate. **For 2004 income, this rate is 3%.**

Advance payments must have been made :

- for the first quarter (AP1), no later than April 10th, 2004;
- for the second quarter (AP2) no later than July 10th, 2004;
- for the third quarter (AP3), no later than October 10th, 2004;
- for the fourth quarter (AP4), no later than December 20th, 2004.

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.

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. 18**  
***Increases and bonuses for advance payments***

Increase	Base	Reduction
- 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 106% 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. 6.75%	
	<u>Amounts payable</u>	
AP1: 9% (3.0 x the reference rate)		AP1: 4.5% (1.5 x the reference rate)
AP2: 7.5% (2.5 x the reference rate)		AP2: 3.75% (1.25 x the reference rate)
AP3: 6% (2.0 x the reference rate)		AP3: 3% (1.0 x the reference rate)
AP4: 4.5% (1.5 x the reference rate)		AP4: 2.25% (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 or 1% of its base		
- contingent exemptions for beginning self-employed		

**1.4.9. Regional and municipal taxes**

None of the Regions has so far made use of the possibility to adapt PIT in respect of 2004 income. Municipal taxes are calculated at the appropriate rate which is specific to each municipality and which is based on the « principal ».

**1.4.10. 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. 19  
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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## CHAPTER TWO CORPORATE TAXATION (CIT)

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### *What is new ?*

*In order to settle the dispute about the expedience of using the reduced rates to define SME's and to set up specific depreciation rules for SME's, government has decided to use the definition used in the Corporation Code in order to determine the depreciation rules.*

#### 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 2005 therefore applies **to profits from financial years closed between 31.12.2004 and 30.12.2005**.

#### 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, are the ones on co-ordination centres and on UCITs (33).

#### 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.).

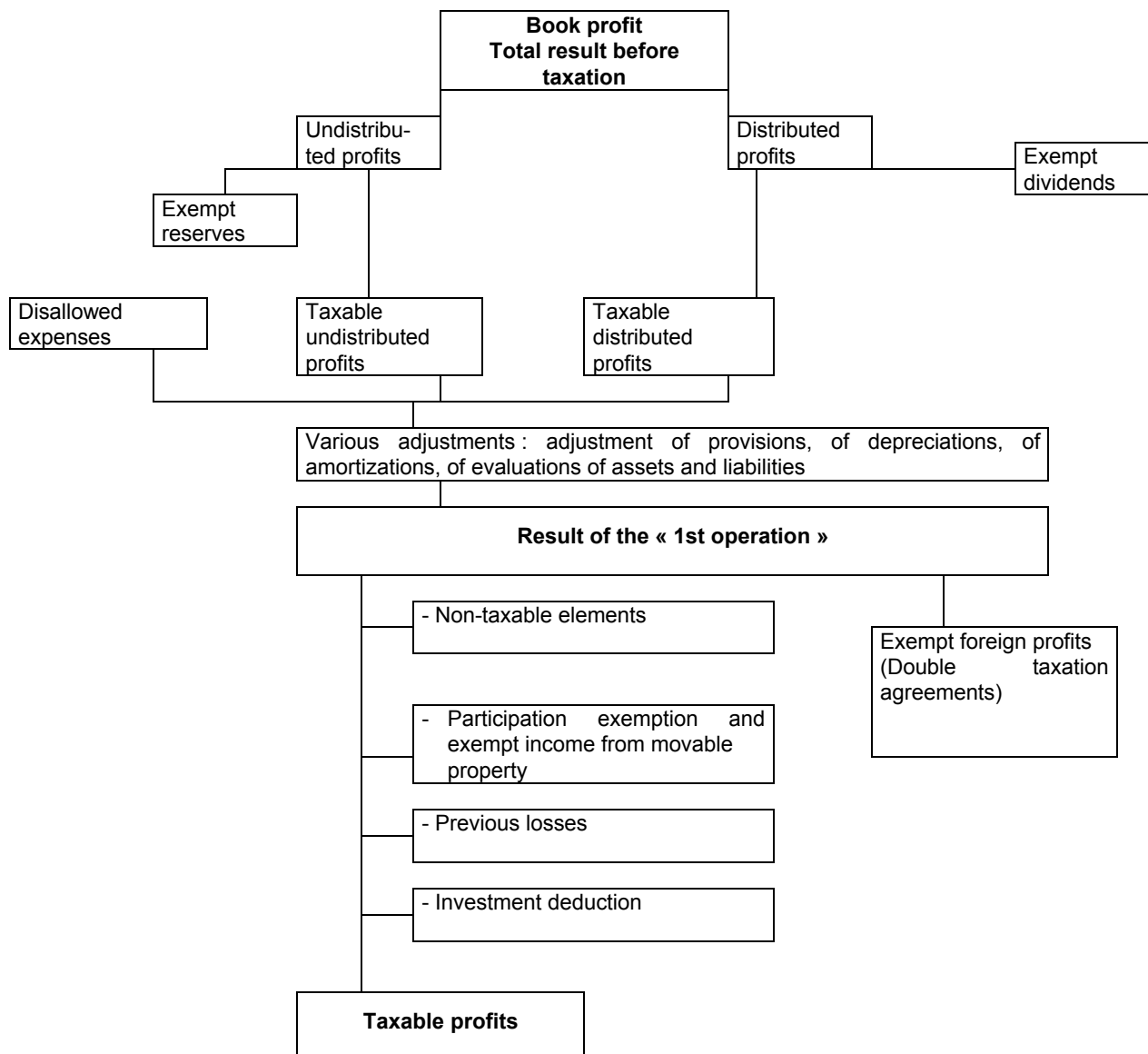
The taxable profit thus calculated is taxed globally.

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33 See page 197 and following.



*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**

Under-valuation 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**

#### ***Capital gains***

The *exempt portion of capital gains* (34) 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.

#### ***Provisions for risks and expenses***

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).

#### ***Depreciation of debts receivable***

*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***

*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.

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34 See pages 73 and following.

**Profits exempt in the framework of the tax shelter agreement for audiovisual work**

Since 2003 sums paid up for the financing of the production of audiovisual work have been entitled to exemption from CIT in the framework of the 'tax shelter' agreement.

The latter is a framework agreement entered into with a view to the financing of audiovisual productions and concluded between the company producing the audiovisual work and the company or companies financing it.

The investment can take the form of a loan or of an acquisition of rights related to the production and/or distribution of the audiovisual work. The total amount of the loans allocated may not exceed 40% of the global sums used by the company in compliance with the framework agreement.

Exemption of the profits is subject to the following conditions:

- the total amount of the sums paid for the execution of the framework agreement under exemption of profits may not exceed 50% of the total expenses budgeted for the production of the audiovisual work,
- as regards any of the companies participating in the financing, the exemption may exceed neither 50% of the profits of the taxable period nor € 750,000 (35),
- the tax-exempt profits must be booked in an unavailable reserve account (intangibility condition) on the liabilities side of the balance sheet and may not be used for the computation of any remuneration or allocation.

The profits are exempted up to 150% of the sums paid, provided the above-mentioned conditions have been met.

**Investment reserve**

The reform of CIT entered into force in 2003 creates the possibility to constitute an exempt investment reserve. This possibility is open to SMEs, the latter being defined as companies entitled to the reduced rates.

The exempt amount of the investment reserve is calculated in function of the variation of the reserved taxable results. These contain not only the (accounting) non-distributed profits but also the undisclosed reserves.

The variation of the taxable reserves is computed before each increase of the starting situation of the reserves and is reduced by

- the exempt capital gains made on stocks and shares,
- the reduction of the paid-up capital,
- the increase of the company's claims on natural persons retaining parts in the company or on persons carrying out the duty of a manager, a liquidator or any similar function.

The result obtained is limited to € 37,500 and can be exempted up to 50%.

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35 The part of the sums entitling to tax-exemption that cannot be exempted because of lack or insufficiency of profits, is carried over to the next tax periods.

The reserve actually constituted must appear in a separate account of the liabilities and satisfy the intangibility condition.

Within three years, the company must invest an amount equal to the investment reserve in tangible or intangible fixed assets entitling to the investment allowance (36). This three-year period starts the first day of the tax period in respect of which the investment reserve was constituted. If these conditions are not met, the investment reserve will be considered as profit of the tax period during which the three-year investment period expires.

### B. Deductibility of expenses and disallowed expenses (DE)

The general principle of deductibility of expenses is the same as with PIT (37).

As from 2003 on, expenses paid for enterprise crèches are deductible within the limits and conditions set out in chapter 3 (38).

Will be mentioned hereafter only the cases where the accounting charges are not deductible and are incorporated in the basis of assessment as “disallowed expenses”. The latter also comprise certain withdrawals of exemptions previously granted.

Are mainly concerned :

- 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 (39),
- certain pensions and pension contributions.
- amounts attributed within the framework of employee equity participation and employee participation in profits and enterprise results (40).

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36 See below, page 61.

37 See above, page 18.

38 See below, page 68.

39 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.

40 This regime is described in the annex to this chapter.

52

Some of these elements are explained hereafter.

The reform of CIT has **modified the depreciation rules**. These modifications are described in chapter 3 (41). They consist in the obligation to depreciate the assets pro rata temporis in the accounting year of their acquisition and to depreciate supplementary expenses at the same rate as the principal. Neither of these restrictions applies to SMEs such as they are being defined in the Corporation Code, i.e. as corporations that possess legal personality and that have not exceeded more than one of the following criterions in the last accounting period :

- annual average of the work force : 50
- annual turnover (ex VAT) : € 6,250,000
- balance sheet value : € 3,125,000

Whatever the case may be, a company whose annual work force average exceeds 100 falls beyond the scope of the definition and cannot claim the depreciation regime for SMEs.

#### DEDUCTIBILITY OF TAXES

Corporate income tax and the related additional crisis tax, advance payments and allowable withholding taxes (42) 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.

Are also non-deductible: taxes, fees and public service charges due to the Regions, as well as the surcharges, penalties, charges and default interests related to them. The non-deductibility does not apply to the taxes referred to in art. 3 of the special law settling the financing of the Communities and Regions, i.e. the former federal taxes in respect of which the powers have been transferred entirely or partly to the Regions (registration duties, inheritance tax, withholding tax on real estate income, opening tax on drinking establishments). These taxes remain deductible.

#### 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 (43),
- interests considered « exaggerated »,
- application of the undercapitalization rule,
- the consequence of the failure to comply with the permanency condition in the matter of PE.

41 See chapter 3, page 67.

42 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 63).

43 See infra, page 55.

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 (44).

This eligibility for non-deduction 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.

### **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 :

- expenses and charges exceeding professional needs to an unreasonable extent,
- 25% of private car expenses (45),

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44 The burden of proof lies with the taxpayer.

45 Fuel expenses remain fully deductible.

- expenses in respect of clothing with the exception of specific working clothes,
- 37,5% of restaurants bills,
- 50% of business-related 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 (46), 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.

#### **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.

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46 To the exclusion of allowances in respect of individual life insurance contracts.

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 (47),
- 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 (48).

### 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 (49) and upon a total or partial distribution of company assets (50).

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 was deducted when they were assigned. That situation has been adjusted : distributions occurring as from March 25 th, 2002, are liable to a 10% withholding tax.

#### D. Exempt income

Since 2003, employers' interventions with respect to the acquisition of personal computers by their employees are deductible in CIT.

The acquisition must take place in the framework of an offer made by the employer, the conditions of which must be the same for all the employees.

The material has to be new. The offer may include not only the pc but also peripheral devices, connection and subscription to internet, as well as any software needed in the framework of the professional activity.

The deductibility is limited to 60% of the offer, the latter being limited to € 1,520.

### **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 two categories :

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47 See above "disallowed expenses".

48 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.

49 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.

50 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.

56



- where earned in Belgium, they are taxable at the full rate. From 2003 on, this is also the case in respect of profits earned abroad in a country Belgium has not concluded a double taxation agreement with,
- where earned abroad in a country Belgium has concluded a double taxation agreement with, they are exempt from CIT and are no longer taken into consideration in the calculation of the tax base.

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

The following are deductible :

- the € 12,180 (or € 24,360, 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 (51);
- the € 4,530 exemption for each additional member of personnel in SMEs (52);
- gifts; the deduction of gifts can, however, neither exceed 5% of the result of the « 1<sup>st</sup> operation », nor € 500,000.

### **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.

#### **B. Exclusions**

Statute law provides five cases of exclusion :

- 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.

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51 See chapter 3, page 74.

52 See chapter 3, page 74.

- 2° The second case of exclusion concerns income allocated or assigned by financing companies (53), money market funds (54) or investment companies (55) 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 globally a tax regime which is '**markedly more advantageous**' than the one the capital gains would have been subject to in Belgium (56).
- 5° The last case of exclusion concerns income obtained by companies, other than investment companies, distributing dividends to which the first four exclusions apply.

A tax regime is considered 'markedly more advantageous' when the normal CIT rate or the effective tax burden is lower than 15%. The common right fiscal provisions applicable to companies located in the European Union are deemed not to be markedly more advantageous.

However, law stipulates limitations of the five 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.
- 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.

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53 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.

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

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

56 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.

58

- 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 10% of the latter's capital or to not less than € 1,200,000.

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 or assigned by inter-municipal associations.

D. The permanency condition

Deduction for participation exemption is only granted in respect of shares in participations which are naturally financial fixed assets. The shares must have been held by the company for an uninterrupted period of one year at least.

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**

Losses from previous tax periods are deductible without any time-limit.

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 (57).

### **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, investments in securement 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.

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

### **2.3.7. Provisions which are common to the deduction at the 3<sup>rd</sup> and the 5<sup>th</sup> operation**

No deduction can apply to :

- a) the part of the taxable profits corresponding to abnormal or benevolent advantages;
- b) the amounts booked as employee participation in profits and enterprise results, considered disallowed expenses;
- c) the basis of assessment of the special taxation on hidden commissions;
- d) the part of the taxable profits arising from the failure to respect the intangibility condition related to investment reserves.

## **2.4. Computation of the tax**

### **2.4.1. Common rate**

CIT is payable at a rate of 33%.

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57 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 € 322,500.

*Table 2.1.  
Reduced rates of CIT*

Taxable net profit		Rate applicable to this bracket
0	- 25,000	24.25%
25,000	- 90,000	31%
90,000	- 322,500	34.50%
322,500	and more	33%

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 € 27,000, 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 at the of any of the three previous assessment periods.

The tax credit can't exceed € 19,850.

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. 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.

#### **2.4.5. 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 (58), **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%.

From 2003 on, companies entitled to the reduced rates are exempt from the tax increase during the first three accounting years after their establishment. This provision has entered into force in respect of companies established in 2003 or later.

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58 See above page 45.

### 2.4.6. *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 (59), 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.

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.

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59 See Part III « Co-ordination centres », pages 201 and following.

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

### **2.4.7. *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<sup>nd</sup>, 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 quotated shares are concerned and, where non-quotated 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** (60) inasfar 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 (61).

### **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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60 This levy is a tax assimilated to income taxes. See 2nd Part, chapter 10.

61 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's new ?*

- *The (temporary) exemption for additional personnel in SMEs has been prolonged till 2007.*
- *Twin-purpose real estate in which the professional part is distinctly separated from the private premises can enjoy the investment allowance in respect of the professional part.*

### 3.1. Tax regime of depreciation

The Income Tax Code authorizes two depreciation methods (62) : 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. However, 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 first annuity can be booked starting with the accounting year in which the fixed assets were obtained. In respect to companies that do not answer the definition of SMEs described in the Corporation Code (63), the first annuity is apportioned in function of the number of days elapsed since the acquisition.

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.

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62 In some cases, the linear depreciation can be doubled : see page 72.

63 See supra, chapter 2, page 53.

In principle, two different depreciation systems are accepted:

- inclusion in the depreciation value of the property with simultaneous depreciation;
- separate depreciation according to a specific scheme (64), or a 100% depreciation in the course of the tax year or the financial year in which the investment was made.

Companies that do not answer the definition of SMEs described in the Corporation Code, can opt only for the first method: so, the additional costs must be depreciated following the same scheme as the principal. This means that the appointment applied to the annuity in respect of the year of acquisition also applies to the additional costs.

### 3.2. Enterprise crèches

Companies, traders and people occupying a liberal profession are entitled to deduct, as professional expenses, the sums paid for the financing of enterprise crèches. The deduction is allowed as well for the sums paid for the creation of new crèches as for the maintenance of existing ones.

The following conditions must be met :

- it has to be a facility recognized or subsidized and supervised by *Kind en Gezin*, *l'Office de la naissance et de l'enfance (ONE)* or the Executive body of the German speaking Community;
- the sums must be paid with a view to the financing of the cost of working or of equipment. They may not include the parents' intervention in the day care facility.

The deduction may not exceed € 5,250, (not indexed, i.e. € 6,400 in respect of 2004 income) per newly created or remained accommodation.

### 3.3. Investment allowance

The investment allowance (65) 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.

#### 3.3.1. 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.

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64 For motor vehicles, the additional costs must be written off at the same rate as the vehicle itself.

65 Articles 68 to 77 of the Income Tax Code.

68

#### 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<sup>66</sup>,
- 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 (67).

#### 3.3.2. Calculation base

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

#### 3.3.3. 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%.

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66 The investment allowance does apply however in respect of the professional part of twin purpose premises, provided the professional and the private parts are obviously distinct.

67 Except for vehicles assigned exclusively to taxi services, to rent with driver and to practical training in recognized driving-schools.

### **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 patents (+10 points),
- to investments aimed at the promotion of research and development of new products and of high-tech which do not interfere with the environment or aimed at minimizing the negative effects thereof on environment (+10 points),
- to investments in energy-saving (+10 points),
- to investments aimed at the securement of professional premises, provided the equipment has been recommended and approved of by the civil servant locally in charge of advice in matters of techno-prevention (+10 points).

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

- by 17 points for investments entitling to the 10 points increase,
- by 7 points for other investments.

*Table 3.1.*  
*Rates of investment allowance - Tax year 2005*

<b>Natural persons - allowance in one go</b>			
Basic rate Ordinary investments		<ul style="list-style-type: none"> <li>- Patents</li> <li>- R&amp;D and environmental investments</li> <li>- Energy-saving investments</li> <li>- Investments in securement</li> </ul>	
<b>3.5%</b>		<b>13.5%</b>	
<b>Companies - allowance in one go</b>			
Ordinary investments		<ul style="list-style-type: none"> <li>- Patents</li> <li>- R&amp;D and environmental investments</li> <li>- Energy-saving investments</li> <li>- Investments in securement</li> </ul>	Investments made in order to promote re-utilization of refillable beverage containers and re-usable industrial products
SMEs <b>3%</b>	Other companies <b>0%</b>	<b>13.5%</b>	<b>3%</b>
<b>Staggered deduction – Natural persons and companies</b>			
R&D and environmental investments		Other investments	
<b>20.5%</b>		<b>10.5%</b>	

### **3.3.4. 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 (68).

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.

68 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.

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 € 755,280	None
between € 755,280 and € 3,021,140	€ 755,280 maximum
€ 3,021,140 and more	25% of carry-over

### 3.4. Fiscal treatment of regional aid

#### 3.4.1. 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.

#### 3.4.2. Doubling of linear depreciation

The doubling of linear depreciation (69) 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.

#### 3.4.3. Exemption from withholding tax on real estate income

The exemption from withholding tax on real estate income (70) 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.

69 See Art. 64 bis of the 1992 Income Tax Code.

70 Cf. laws of 17.07.1959 and 30.12.1970.

72



### 3.5. Tax arrangements for capital gains

#### 3.5.1. 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 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 (71).

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

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

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) (72).

On the other hand, **the condition relating to the participation threshold is without effect on the exemption of capital gains.**

##### C. 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.

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71 The exemption of the monetary adjustment portion only concerns capital gains made on assets acquired or constituted not later than 1949.

72 See above, page 57.

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**.

### **3.5.2. 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 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 (73).

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.

### **3.6. Exemption for certain categories of additional staff**

An exemption (deduction from taxable profit) of € 12,180 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 (74),
- the management of the "total quality" department.

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

This amount is raised from € 12,180 to € 24,360 when the newly engaged person is a highly qualified researcher employed in the field of scientific research. The person concerned must

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73 The regime described hereafter applies where the discontinuation of a professional activity occurred after April 6th, 1992.

74 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.

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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.

### **3.7. Exemption for additional SME personnel**

Per taxable period and per additional staff member employed in Belgium € 4,530 of the profits and proceeds obtained by an SME are tax exempt.

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 3.6.,
- additional personnel whose gross salary exceeds € 81.69 per day or € 10.75 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 € 4,530 per released member of the personnel.

This exemption for additional personnel in SMEs has been renewed for the 2004-2007 period.



## CHAPTER FOUR LEGAL ENTITIES INCOME TAX (LEIT)

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### 4.1. Who is liable to legal entities income tax ?

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

- the State, the provinces, the Brussels conurbation, the municipalities and public clerical institutions (authorities managing church property);
- 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. ;
- 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 € 1,520 bracket of income from savings deposits and the first € 150 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.

## DIRECT TAXATION

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- 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 (75). 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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75 See page 15.

## CHAPTER FIVE WITHHOLDING TAXES

### 5.1. Tax base, rates and surcharges

The rate of the withholding tax on real estate income is based on the index-linked cadastral income. For income earned in 2005, the index coefficient has been set at 1.3889.

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	2.26	1.25 (**)	1.25

(\*) *In the Walloon Region, the reduced 0.8% rate in respect of houses belonging to the SRWR (a regional housing board) or to companies recognized by it, has also applied to since 2004 to houses belonging to the FLFNW (a co-operative housing company with limited liability).*

(\*\*) *In respect of material and equipment, the withholding tax is calculated on the base of a cadastral income multiplied by a coefficient obtained by dividing the mean price index of 2002 by the average of the 1988 and 1989 indices.*

All these rates are to be increased by the provincial and municipal surcharges. 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%.

### 5.2. Reductions, rebates and exemptions

#### 5.2.1. Common provisions

Is not chargeable to withholding tax on real estate income, the cadastral income of:

- immovable property or parts of immovable property used, outside any profit seeking, for education or for the establishment of hospitals, rest homes and holiday homes for children or elderly people,
- immovable property used by foreign states for the establishment of their diplomatic or consular missions,
- immovable property that belongs to the national demesne, yields no profit by itself and is used for a public service or a service of public utility.

## 5.2.2. Flemish Region

### REDUCTION FOR A MODEST DWELLING

A reduction is granted where the **non-indexed** cadastral income of the taxpayer's global real estate does not exceed € 992. The standard rate of this reduction, which applies to the withholding tax on the main residence, is 25%. The € 992 limit is calculated on the basis of the real estate situated in the Flemish Region.

In the case of the construction of a new dwelling house or the acquisition of a newly built dwelling 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 increased reduction if he has received a subsidy for the construction or the acquisition of that dwelling house.

### FAMILY ENCUMBRANCES

Reduction for family encumbrances is granted as a lump sum and is independent of the concept of "dependent children" used in respect of personal income tax. In order to entitle to this reduction, a child must entitle to child benefit and be part of the household in January 1<sup>st</sup> of the tax year. A disabled child counts for two.

These reductions are 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
2	6.21
3	9.83
4	13.76
5	18.03
6	22.62
7	27.55
8	32.82
9	38.41
10	44.36

Unofficial amounts calculated by the authors – BOJ with official amounts has not been published yet.

These reductions apply to withholding tax on real estate due to the Region and thus have to be multiplied by the rate of the surcharges.

### Example

*Cadastral income : € 1,000*

*Surcharges : 3,000*

*Dependent children : 2*

*Computation withholding tax on real estate due to Region : (1,000 x 0.025)-6.21 = 18.79*

*Computation withholding tax due to local authorities: 18.79 x 30 = 563.70*

*Total withholding tax : 582.49*



**DISABILITY AND INFIRMITY**

War invalids are granted a 20% reduction.

The reduction for disabled people (76) (other than children) is granted as if the disabled were children. A family with one (not disabled) child and a disabled adult, is entitled to the tax reduction for a disabled person, which is equal to the reduction for two (not disabled) children (see Table 5. 2).

**REBATE FOR UNPRODUCTIVENESS**

The rebate for unproductiveness is granted proportionally to the period of non-occupation or unproductiveness of the property. In order to entitle to this proportional rebate, the unproductiveness or non-occupation must be of not less than 90 days in the year. The rebate stops being granted as soon as the period of unproductiveness exceeds 12 months combined over the current and the previous assessment period. So, in order to entitle to the 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.

**EXEMPTIONS**

Is exempt from the withholding tax in the Flemish Region, the cadastral income of :

- under certain conditions, real estate used for facilities and/or services for elderly people,
- material and equipment giving rise to an increase of the cadastral income. The part of the cadastral income that exceeds the cadastral income recorded on January 1<sup>st</sup>, 1998 is exempt from the withholding tax on real estate,
- real estate that is within the scope of the forest decree of June 13<sup>th</sup>, 1990, and that is recognized as a nature reserve or as a forest protecting the environment.

Moreover two new exemptions have been in force since 2003: the first is granted where premises used for commercial purposes are converted into dwelling houses; the second (which is a partial exemption) is granted in respect of renovation of houses unfit for human habitation. Both exemptions are granted for three or five years but they cannot be granted concurrently.

**5.2.3. Walloon Region**

In the Walloon Region, the rebate of withholding tax on real estate apply to only one dwelling, to be designated by the taxpayer. Only the reduction for a modest dwelling is from now on expressed as a percentage of the cadastral income. The other reductions are lump sums, applied to the global withholding tax on real estate, i.e. provincial and local surcharges included.

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76 People suffering from a handicap of at least 66% due to one or several complaints.

### REDUCTION FOR A MODEST DWELLING

A reduction is granted where the **non-indexed** cadastral income of the taxpayer's global real estate does not exceed € 745. The standard rate of this reduction is 25%. It is not granted in respect of the part of the dwelling house that is used for the purpose of a trade or business, where that part exceeds one fourth of the cadastral income of the dwelling house.

In the case of the construction of a new dwelling house or the acquisition of a newly built dwelling 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 reduction if he has received a subsidy for the construction or the acquisition of that dwelling house.

### FAMILY ENCUMBRANCES

This reduction is granted for each person dependent on the taxpayer, the taxpayer's spouse or legal cohabitant. The reduction amounts to € 125 per dependent person and is doubled (€ 250) for each disabled dependent person.

The spouse or the legal cohabitant does not entitle to the reduction.

#### *Example*

<i>Cadastral income : € 1,000</i>	
<i>Surcharges : 3,000</i>	
<i>Dependent children : 2</i>	
<i>Computation withholding tax on real estate due to Region : (1,000 x 1.25%) =</i>	<i>€ 12.50</i>
<i>Computation withholding tax due to local authorities : 30 x 12.50 =</i>	<i>€ 375.00</i>
<i>Reduction for dependent children : 2 x € 125 =</i>	<i>€ -250.00</i>
<i>Total withholding tax :</i>	<i>€ 137.50</i>

### DISABILITY AND INFIRMITY

War invalids are granted a € 250 reduction. A disabled taxpayer is entitled to a € 125 reduction and a disabled spouse to a € 250 reduction.

### REBATE FOR UNPRODUCTIVENESS

The rebate for unproductiveness is granted proportionally to the period of non-occupation or unproductiveness of the property. In order to entitle to this proportional rebate, the unproductiveness or non-occupation must be of not less than 90 days in the year.

### EXEMPTIONS

Is exempt from withholding tax in the Walloon Region, the cadastral income of :

- material and equipment, provided it does not exceed € 795 per cadastral parcel
- service-flats and child care facilities for children under three years of age,
- real estate situated in the Walloon Region and recognized as a "Natura 2000" territory, a nature reserve or a forest reserve.

It should also be mentioned that, certain economic sectors excepted, SMEs having established their seat in the Walloon Region, can be exempted from the withholding tax (from July 1<sup>st</sup>, 2004 on), if they realize certain investment programs.

### 5.2.4. Region of Brussels-Capital

#### REDUCTION FOR A MODEST DWELLING

A reduction is granted where the **non-indexed** cadastral income 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 case of the construction of a new dwelling house or the acquisition of a newly built dwelling 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 reduction if he has received a subsidy for the construction or the acquisition of that dwelling house.

#### FAMILY ENCUMBRANCES

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 alive.

#### Example

Cadastral income : € 1,000

Surcharges : 3,000

Dependent children : 2

Computation withholding tax on real estate due to Region :  $(1,000 \times 1.25\%) =$

€ 12.50

Computation withholding tax due to local authorities :  $30 \times 12.50 =$

€ 375.00

Subtotal :

€ 387.50

20% reduction for 2 dependent children :

€ -77.50

Total withholding tax :

€ 310.00

#### DISABILITY AND INFIRMITY

War invalids are granted a 20% reduction and disabled people a 10% reduction.

#### REBATE FOR UNPRODUCTIVENESS

The rebate for unproductiveness is granted proportionally to the period of non-occupation or unproductiveness of the property. In order to entitle to this proportional rebate, the unproductiveness or non-occupation must be of not less than 90 days in the year. In the Region of Brussels-Capital, this reduction is only granted under specific conditions (77).

77 The conditions were set in the ordinance of April 13<sup>th</sup>, 1995 amending the ordinance of June 23<sup>th</sup>, 1992 concerning withholding taxes on real income (BOJ of June 13<sup>th</sup>, 1995). In its judgment of December 19<sup>th</sup>, 2002 the Court of Arbitration considers this ordinance to be in conflict with the articles 11 and 12 of the Constitution.

**EXEMPTIONS**

Is exempt from the withholding tax in the Region of Brussels Capital, the cadastral income of :

- goods that are part of the protected patrimony and that are neither let nor exploited,
- real estate situated in certain places that have been given a new purpose through renovation or rehabilitation. This exemption from withholding tax is granted for five years.

**5.3. Tax credit for real estate withholding tax**

Only withholding taxes paid in respect of the taxpayer's principal private dwelling are creditable against his PIT tax liability. The tax credit is strictly limited to 12.5% of the part of the cadastral income included in the taxpayer's tax base.

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## CHAPTER SIX

### WITHHOLDING TAX ON INCOME FROM MOVABLE PROPERTY (T.Mov.)

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#### *What is new ?*

- *The Council Directive on taxation of savings income will enter into force on July 1<sup>st</sup> 2005. Its aim is to enable savings income, in the form of interest payments made in one Member State to individual residents for tax purposes in another Member State, to be made subject to effective taxation. This Savings-Directive and its scope of application in Belgium will be detailed in the updated electronic version of the Tax Survey.*

#### 6.1. Withholding tax on dividends

Dividends are subject to a withholding tax of 25%. In respect of "new shares" (see further) this rate is lowered to 15%.

#### 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.

#### "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 1<sup>st</sup>, 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, Finance and Insurance Commission;
- c) dividends distributed by investment companies;
- d) 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.

### GAINS ACCRUING ON LIQUIDATION

A 10% withholding tax is charged on the amounts attributed following the liquidation of the issuing company, following the total or partial distribution of the company's assets or following the repurchase by the company of its own shares. The amount liable to withholding tax is the amount chargeable as a dividend under CIT provisions (78).

This new provision concerns income granted or made payable as from January 1<sup>st</sup>, 2002. Insofar as gains on liquidation are concerned, the new provision applies to liquidations realized as from March 25<sup>th</sup>, 2002.

## 6.2. Withholding tax on interests

### 6.2.1. 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.

### 6.2.2. Special treatment of certain financial products and certain financial operations

### SAVINGS DEPOSITS

The first € 1,550 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

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78 See Chapter II, p. 56

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.

#### **6.2.3. Associated companies: implementation of the “Interest-Royalty Directive”**

Interest paid by a domestic company to a domestic associated company or to an associated company situated in another EU Member State is exempt from withholding tax on income from movable property.

Two companies are deemed to be “associated companies” if one of them has a direct or indirect minimum holding of at least 25% in the capital of the second or when a third company has a direct or indirect holding of 25% in the capital of both the first and the second company.

The abolition of the withholding tax also applies to withholding taxes operated in the framework of international agreements concluded with a view to eliminate double taxation.

The Directive does not apply where the rights, debt-claims or securities in respect of which the interest is paid, have been held, at any time during the interest-yielding period, by an establishment situated outside the European Union.

The burden of proof as to the fulfilment of the requirements needed to be exempt of the withholding tax, lies with the debtor of the income.

#### **6.2.4. Exemptions in respect of the nature of the investors**

There are five distinct categories of investors:

- **“financial institutions”** (FI) 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”** (SI) shall be construed as : health insurance funds and institutions created in the framework of social legislation,
- **“professional investors”** (PI) shall be construed as : companies liable to CIT and Belgian institutions of foreign companies liable to NRIT,

- “**private savers**” (PS) shall be construed as being all taxpayers who have not used their interest bearing movable property for their professional activity;
- “**non-resident savers**” (NR) 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.

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

**Table 6. 1**  
**Exemptions in respect of the nature of the investors**

	FI	SI	PI	PS	NR
- public funds, bonds, deposit certificates and similar securities	E	E			(E*)(a)
- income from debt-claims and securities					
- 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 granted in respect of income from debt-claims and securities the beneficiary of which is identified.
- (c) For the first € 1,550 slice of interests only (see supra).
- (d) For deposits with financial institutions only.



## CHAPTER SEVEN

### WITHHOLDING TAX ON EARNED INCOME AND ADVANCE PAYMENTS

This chapter relates to withholding tax on earned income and to advance payments of the year 2005.

#### 7.1. Withholding tax on earned income (79)

This chapter only relates to withholding taxes on income earned by residents and is confined to the most frequent forms of remuneration, i.e. the general system applying to employees' and director's remunerations and some particular cases.

##### 7.1.1. Employees' remunerations

The tax deducted at source is withheld by the employer and computed in six main steps (80) :

- 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.

##### 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 7.1*  
*Professional expenses and computation of the withholding tax on earned income*

Gross annual income	Professional expenses	
	on lower limit	% above lower limit
0 - 4,660.00	0	25%
4,660.00 - 9,260.00	1,165.00	10%
9,260.00 - 15,420.00	1,625.00	5%
15,420.00 - 54,653.33	1,933.00	3%
54,653.33 and more	3,110.00	0%

79 The ways of implementation applicable to the withholding tax on earned income granted or made payable as from 01.01.2005 are laid down in the Royal Decree of 26.11.2004 (BOJ of 15.12.2004, 1<sup>st</sup> edition).

80 The 7% additional local taxes have been taken into account for the calculation of the withholding tax on earned income.

C. Scale

The **common scale** shown in Table 7. 2 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 € 105, « net » amount being construed as the amount after deduction of social security contributions and after deduction of 20% of the remainder.

From January 1<sup>st</sup>, 2004, legal cohabitants have been assimilated with married people. So the term "spouse" also covers a "legal cohabitant".

**Table 7. 2**  
**Computation of withholding tax on earned income – Common scale**

Net taxable annual income	Basis tax	
	on lower limit	% above lower limit
0 - 7,090	0.00	26.75%
7,090 - 9,640	1,896.58	32.10%
9,640 - 13,970	2,715.19	42.80%
13,970 - 30,840	4,568.37	48.15%
30,840 and more	12,691.28	53.50%

A particular provision applies :

- where the beneficiary's spouse has no earned income of his/her own ;
- where, on 01.01.2005, the beneficiary's spouse has an own earned income consisting exclusively of pensions, annuities or assimilated benefits not exceeding a monthly net amount of € 105, « 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 € 8,330. 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 A and Income B.

D. Taking into consideration of the exempt portion

When the common scale, as mentioned in Table 7.2 applies as it is, the basis tax computed according to that scale shall be reduced by € 1,313.43, 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 € 2,626.86, 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 7. 3**  
**Reductions of the withholding tax for dependent children (81) and peculiar family situations**

Number of dependent children and peculiar family situations	Annual reduction
1	360
2	900
3	2,412
4	4,416
5	6,516
6	8,616
7	10,728
8	12,984
for each child beyond the eighth	2,340
Single person	240
widow(er) not married again, with dependent children	336
single parent family	336
Handicapped taxpayer (82)	336
other dependent persons (83)	336

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.

**7.1.2. 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.

81 Disabled children count for two.

82 This reduction applies to each of the spouses.

83 This reduction is doubled for disabled dependent persons.

**Table 7. 4**  
**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 (€)			Applicable rate of withholding tax on earned income %	
			Annual holiday pay	Other allowances
0.00	-	5,790.00	0.00	0.00
5,790.01	-	7,200.00	19.17	23.22
7,200.01	-	8,945.00	21.20	25.23
8,945.01	-	10,615.00	26.25	30.28
10,615.01	-	12,360.00	31.30	35.33
12,360.01	-	14,110.00	34.33	38.36
14,110.01	-	17,560.00	36.34	40.38
17,560.01	-	19,310.00	39.37	43.41
19,310.01	-	26,300.00	42.39	46.44
26,300.01	-	35,045.00	47.44	51.48
35,045.01		and more	53.50	53.50

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 7.5 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 7. 5**  
**Withholding tax on exceptional allowances**  
**Exemption limit for dependent children**

Number of dependent children (1)	Maximum amount
1	7,599
2	9,718
3	13,845
4	18,382
5	22,888
6	27,393
7	31,888

(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 € 12,000 is exempted up to € 18,382 - € 12,000 = € 6,382.

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 7.6, 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 7.6.

**Table 7. 6**  
**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	17,485
2	20	17,485
3	35	19,235
4	55	22,730
5	75	24,480

(1) a disabled dependent child counts for two.

### 7.1.3. 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 7. 7**  
**Scale applicable to arrears**

Reference salary	Rate of withholding tax in %
0.00 - 6,270.00	0.00
6,270.01 - 8,655.00	6.06
8,655.01 - 11,375.00	12.11
11,375.01 - 15,920.00	18.17
15,920.01 - 17,795.00	19.17
17,795.01 - 33,310.00	31.30
33,310.01 and more	38.36

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 7.5 sub 7.1.2., the salary arrears are exempted up to the difference between the said maximum amount and the reference salary.

### 7.1.4. Compensations for termination

Compensations for termination are subjected to a withholding tax on earned income as follows :

- when their gross amount does not exceed € 760.00, they are treated as an ordinary monthly salary;
- when they do exceed the gross amount of € 760.00, 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.

### 7.1.5. 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 7. 8**  
***Withholding tax on earned income payable on attendance fees, commissions and other occasional allowances***

Amount of the compensation		Withholding tax rate on earned income (in %)
0.00 -	500.00	27.25
500.01 -	650.00	32.30
650.01 -	et plus	37.35

#### **7.1.6. 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 not exceeding 23 workdays and related to 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.

#### **7.1.7. 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 2005 and provided the gross amount of the remunerations does not exceed € 2,075 a month.

#### **7.1.8. 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 7. 9**  
**Periodical remunerations of directors**  
**Reduced base of withholding tax**

Gross amount of monthly remuneration	Reduction	
	on lower limit	% above the limit
0 to 800	300.00	
800 to 3,890	300.00	20.5%
3,890 to 5,700	933.45	14.5%
5,700 and more	1,195.90	0.0%

Deductible professional expenses are calculated at the single rate of 5% with a maximum of € 3,110.

### **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.

### **7.2. 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) (84).

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 (85).

For the income of the year 2005, the reference rate is 3%.

84 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.

85 See page 44 and following.

The taxation rates which apply in respect of the avoidance of tax increases and in respect of bonuses are thus the following :

**Table 7. 10**  
***Increases and bonuses of advance payments of the year 2005***

Increase		Bonus	
AP1	9%	AP1	4.5%
AP2	7.5%	AP2	3.75%
AP3	6%	AP3	3%
AP4	4.5%	AP4	2.25%



**PART TWO**  
**INDIRECT TAXATION**

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## CHAPTER ONE VALUE ADDED TAX (VAT)

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### *What is new ?*

- *Lowering of VAT rate on non-alcoholic beverages (from 21% to 6%)*
- *Increase of the amounts of the maximum turnover eligible for submission of quarterly returns (with exceptions) and of the maximum turnover eligible for the flat-rate system for small enterprises*

*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. 3bis).

### 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. In the case of the supply of gas through the natural gas distribution system, or of electricity, the place of supply is the place where the customer has effective use and consumption of the goods (with exceptions, such as tax payers whose principal activity is reselling gas or electricity). 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 or upon cashing).

### **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, the granting of the right of access to traffic routes and to the corresponding civil engineering works, electronic supplies of services, 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, for electronic supplies of services, 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, (in certain cases, such as advertising services, the supply of staff, communication services, electronic supply of services, provision of access to, and of transport or transmission through, natural gas and electricity distribution systems,...) 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 or cashing).

### 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 supplies 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 n° 20, of July 20<sup>th</sup>, 1970, as last amended by the Royal Decrees of December 27<sup>th</sup>, 2002, April 22<sup>nd</sup>, 2003, July 7<sup>th</sup> and 11<sup>th</sup>, 2003 and January 14<sup>th</sup>, 2004, 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 i.a. margarine, caviar, and certain crustaceans, or molluscs), inclusive beverages, except beer with an alcoholic strength by volume exceeding 0.5% or any other beverage with an alcoholic strength by volume exceeding 1.2%;
- water supply;
- medicines and medical appliances;
- 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 31<sup>st</sup>, 2005

*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 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 Decrees of December 27<sup>th</sup>, 2002, April 22<sup>nd</sup>, 2003, July 7<sup>th</sup> and 11<sup>th</sup>, 2003 and January 14<sup>th</sup>, 2004. We are concerned here mainly with plant-protection products, margarine, tyres and tubes for wheels of agricultural machines and tractors, certain solid fuels (i.a. 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). Non-taxable legal persons, small enterprises and taxable persons not entitled to deduction are also assigned a VAT identification number when their intra-Community acquisitions of goods exceed € 11,200 or when they declare to submit to VAT all their intra-Community acquisitions. In some cases, even taxable persons not established in Belgium will be assigned a Belgian VAT identification number.

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 € 1,000,000 a year may, if they comply with certain rules, submit quarterly returns. This provision does not apply to taxpayers whose overall annual turnover (less VAT) exceeds € 200,000 in respect of their supplies of mineral oils, mobile telephone equipment, computers with their peripherals, accessories and components, and motorized land vehicles subject to registration. Taxpayers submitting quarterly returns 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 € 750,000 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 ?*

- *Abolition of registration duties on the creation/transfer of a mortgage on vessels which are seagoing vessels by nature.*
- *In respect of the Flemish Region: the portability of formerly paid registration duties is limited to the amount of the duties paid initially; donations of movable property under the suspensive condition that the donor deceases before the donee, are assimilated for tax purposes to legacies.*
- *In respect of the Walloon Region: rates of donation duties and of inheritance tax have been put at the same level in respect of third parties; rates applying to donations between legal cohabitants fulfilling certain conditions are the same as for donation between spouses.*

*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 or relating to 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. Except for the Region of Brussels-Capital, sales of small rural properties and modest lodgings entitle to a reduced rate of duty: the duty is lowered to **5%** in the Flemish Region and to **6%** in the Walloon 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. This standard relief is called 'abatement' (see art. 46bis and 212ter of the Code, such as it applies to the Flemish Region). In addition to the regulation in respect of this abatement, the Flemish Region applies 'portability' of registration duties formerly paid. When a natural person sells or splits up his main residence and acquires within two years a new real estate (house or building lot) intended to become his new main residence [within two years (house) or five years (building lot)], the initial registration duties paid formerly are deductible, under certain conditions and within certain limits, from the duties to be paid in respect of the new acquisition intended to be his new main residence. This is called portability in the form of deduction (see art. 61<sup>3</sup> to 61<sup>5</sup> and 212ter of the Code, such as applicable to the Flemish Region). Besides, there is a portability in the form of reimbursement (see art. 212bis and 212ter of the Code, such as applicable to the Flemish Region). The latter can be applied for where the natural person only sells or splits up his main residence after acquiring the building lot or house intended to become his new residence. The sale or splitting has to take place within two years after the acquisition of the dwelling (or five years in the case of an acquisition of a building lot) intended to be used as his new main residence. The tax advantage is the same in both forms of portability (maximum € 12,500). The abatement can't combine with the conveyability in the form of a deduction.

In the Region of Brussels-Capital, the tax base is, under certain conditions, reduced by € 45,000 in respect of acquisitions, by natural persons, of real estate (not being a building lot) aimed at being their main residence. This reduction is brought to € 60,000 when the real estate is situated in an area allotted for enlarged development of housing or urban renovation. These areas have been determined in legal provisions laid out by the Region of Brussels-Capital.

In certain cases (e.g. certain re-sales) and under certain conditions, the duties levied may be entirely or partly refunded.

**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%** (in the Flemish Region : **10%**) 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 0.5% rate is applicable to creations of mortgage on vessels not intended by nature to be seagoing vessels, to the giving in pledge of a business and to the creation of farming privileges. Vessels intended by nature to be seagoing vessels are not chargeable to the proportional registration duty.

**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 rates can differ from one Region to another.

In respect of donations made by an inhabitant of the Kingdom, the rate to be applied is the rate applying in the Region where the donor has established his fiscal residence at the moment of the donation. If the donor's fiscal residence had been situated in more than one place in Belgium during the period of five years preceding the donation, the longest residence determines the Region whose rates will be applicable. In respect of donations of real estate situated in Belgium by a person who is not an inhabitant of the Kingdom, the rate to be applied is the one applying in the Region where the real estate is situated.

### 1. RATES OF DONATION DUTIES IN THE FLEMISH REGION

In the Flemish Region a distinction is made between donations of immovable property, movable property and undertakings.

As regards donations of *immovable property*, a duty is levied on the gross part of each of the donees ; it is calculated according to the tables I and II here after.

**TABLE I - Donations of immovable property 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 of immovable property 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 any 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.

In respect of donations of *land* the town and country planning provisions have designed as building land, special rates apply, under certain conditions, to a natural person's gross portion in the donated land, when notarial deeds drawn up between January 1<sup>st</sup>, 2003 and December 31<sup>st</sup>, 2005 are concerned.

**TABLE III - Donations of building land between lineal relatives and between spouses**

Portion of value of the gift in €		Tax rate in %
from	to (included)	Lineal and between spouses
0.01	12,500	1
12,500	25,000	2
25,000	50,000	3
50,000	100,000	5
100,000	150,000	8
150,000	200,000	14
200,000	250,000	18
250,000	500,000	24
above	500,000	30

**TABLE IV - Donations of building land between collaterals and between 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 any other persons
0.01	150,000	10	10	10
150,000	175,000	50	55	65
above	175,000	65	70	80

The duty is calculated per donee and per portion of the gift.

As regards donations of *movable property*, a **3%** duty is levied on the gross part of each of the donees in respect of donations between lineal relatives or between spouses, and a **7%** duty in respect of donations between collaterals or non-relatives. However, donations of movable property made under the suspensive condition that the donor deceases before the donee, are assimilated to legacies and are subject to inheritance tax (see further, chapter 3).

In respect of donations rights, the word “spouse” shall also be construed as being

1° the person who, at the date of the gift, in line with the terms of Book III, Title Vbis of the Civil Code, legally cohabits with the donor;

or

2° the person or persons who, at the date of the gift, has or have been living together with the donor, 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 date of the gift. A certificate of residence holds a refutable assumption of uninterrupted cohabitation and shared household.

As regards donations of *businesses* (ownership or usufruct of an industrial, commercial, or agricultural undertaking or of a liberal profession) or of shares of certain companies or debt-claims on certain companies, they are liable, subject to certain conditions, to a **2%** duty. This rate does not apply to immovable property used partially or wholly as a dwelling. Conditions and implementations are described in art. 140bis to 140quinquies of the Code, such as applicable to the Flemish Region.

## 2. RATES OF DONATION DUTIES IN THE WALLOON REGION

In the Walloon Region, a distinction is made between donations of ordinary (movable or immovable) property and donations of undertakings.

As regards donations of *ordinary property*, a duty is levied on the gross part of each of the donees; it is calculated according to the tables I and II hereafter.

**TABLE I - Donations of ordinary property between lineal relatives, between spouses and between legal cohabitants**

Portion of value of the gift in €		Tax rates in %
from	to (included)	Lineal, between spouses and between legal cohabitants
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 of ordinary property between collaterals and between 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 any other persons
0.01	12,500	20	25	30
12,500	25,000	25	30	35
25,000	75,000	35	40	60
75,000	175,000	50	55	80
Above	175,000	65	70	90

The duty is calculated per donee and per portion of the gift.

Donor and donee are *legal cohabitants* if :

- at the time of the donation they shared the same domicile and,
- at that time they had been tied for more than a year by a statement of legal cohabitation filled out in conformity with the provisions of Book III, Title Vbis of the Civil Code ;
- they are neither brothers and sisters to each other, nor uncle or aunt and nephew or niece.

As regards certain donations of *businesses* (full ownership of an industrial, commercial, or agricultural undertaking or of a liberal profession), as well as regards donations of shares of certain companies, they are liable, subject to certain conditions, to a **3%** duty. This rate does

not apply to immovable property used partially or wholly as a dwelling. Conditions and implementations are described in art. 140bis to 140octies of the Code, such as applicable to the Walloon Region.

### 3. RATES OF DONATION DUTIES IN THE REGION OF BRUSSELS-CAPITAL

In the Region of Brussels-Capital, a distinction is made between donations of ordinary (movable or immovable) property, donations of dwellings and donations of undertakings.

As regards donations of *ordinary property* a duty is levied on the gross part of each of the donees; it is calculated according to the tables I to IV hereafter.

**TABLE I - Donations of ordinary property between lineal relatives, between spouses and between cohabitants**

Portion of value of the gift in €		Tax rates in %
from	to (included)	Lineal and between spouses and between cohabitants
0.01	50,000	3
50,000	100,000	8
100,000	175,000	9
175,000	250,000	18
250,000	500,000	24
above	500,000	30

“Cohabitant” means any person being in a situation of legal cohabitation such as defined in Book III, Title Vbis of the Civil Code.

**TABLE II - Donations of ordinary property between brothers and sisters**

Portion of value of the gift in €		Tax rate in %
from	to (included)	Between brothers and sisters
0.01	12,500	20
12,500	25,000	25
25,000	50,000	30
50,000	100,000	40
100,000	175,000	55
175,000	250,000	60
above	250,000	65

**TABLE III - Donations of ordinary property between uncles or aunts and nephews or nieces**

Portion of value of the donation in €		Tax rate in %
from	to (included)	Between uncles or aunts and nephews or nieces
0.01	50,000	35
50,000	100,000	50
100,000	175,000	60
above	175,000	70

**TABLE IV - Donations of ordinary property between any other persons**

Portion of value of the donation in €		Tax rate in %
from	to (included)	Between any other persons
0.01	50,000	40
50,000	75,000	55
75,000	175,000	65
above	175,000	80

As regards *donations of dwellings* the rates of table V can apply. This preferential rate only applies where

- it is a donation between lineal relatives, between spouses or between cohabitants;
- the donation is a “dwelling” i.e. (a portion of) a real estate intended to be used wholly or partly as a dwelling, and that is in the unrestricted ownership of the donor,
- provided the dwelling is situated in the Region of Brussels-Capital.

Donations of building land are explicitly excluded from the preferential rate.

In order to be entitled to the preferential rate, the donee may not be the owner of a dwelling and the donee or one of the other donees have to make certain commitments (see art. 131bis of the Code, such as it is applicable to the Region of Brussels-Capital).

**TABLE V - Donations of dwellings between lineal relatives, between spouses and between cohabitants**

Portion of value of the donation in €		Tax rate in %
From	to (included)	Lineal, between spouses and between cohabitants
0.01	50,000	2
50,000	100,000	5.3
100,000	175,000	6
175,000	250,000	12
250,000	500,000	24
above	500,000	30

The duty is calculated per donee and per portion of the gift.

As regards certain donations of businesses (full ownership of an industrial, commercial or agricultural undertaking or of a liberal profession), as well as donations of shares of certain companies, they are liable, subject to certain conditions, to a **3%** duty. This rate does not apply to immovable property used partially or wholly as a dwelling. Conditions and implementations are described in art. 140bis to 140octies of the Code, such as applicable to the Region of Brussels-Capital.



#### 4. REDUCED DONATION DUTIES OWING TO FAMILY ENCUMBRANCES

In the Walloon Region and in the Region of Brussels-Capital, donees having at least three children under 21 at the time of the donation are entitled to a tax reduction. In the Flemish Region, this reduction is granted only on behalf of immovable property not entitled to the special rate for building land.

##### 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 on immovable property. 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), and *expedition duties* (on expeditions, copies or extracts which are delivered in clerk's offices). There are a whole series of exemptions.

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## CHAPTER THREE ESTATE DUTIES

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### *What is new ?*

- *As regards the Flemish Region : donations of movable property under the suspensive condition of the donor's decease are assimilated to legacies (and subject to inheritance tax).*

*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 (86) by each of the heirs,
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 longest-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.

86 Exceptions : as regards inheritances opened in the Flemish Region or in the Region of Brussels-Capital : where one or more heirs do **not** belong to the groups "lineal relatives, spouses or cohabitants" or "brothers and sisters", the tax rates vary according to the **sum** of the total net shares of these persons (see *infra*).

*Table II - Inheritances between brothers and sisters or between « others » (87)*

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 :

- 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 (88).
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).

87 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).

88 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.

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. In order to determine the net shares mentioned sub 2, 3 and 4 above, the exemption for disabled persons (see 8 infra) is not taken into consideration. Where applicable, the tax reduction cannot exceed the amount of the tax due after the granting of the exemption for disabled persons.
6. 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.
7. 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, 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 6 above.
8. Where lineal heirs, spouses or cohabitants are disabled persons, the shares devolving to them entitle to a tax exemption applicable to the base of the scale of inheritance tax and transfer duties upon death (Table I). This exemption, which amounts to € 3,000, is to be multiplied by a factor varying from 2 to 18, depending on the age of the assignee. The exemption is first offset against the assignee’s net immovable share and then, if the latter is exhausted, against his net movable share. In respect of shares devolving to other persons (Table II), the exemption amounts to € 1,000, to be multiplied by the same factors. If a disabled person is taxable at the Table II rates together with one or more non-disabled persons, he will be charged to tax on his net share as if he were a single heir. The shares of the other assignees will be calculated as if the disabled person were not disabled.
9. 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 (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, by the Order of February 23rd, 1999 and by the Order of December 13th, 2002).

10. 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.
11. Under certain circumstances (see art. 55ter and 55quater of the Estate Duty Code applicable in the Flemish Region), the value of unbuilt immovable property situated in the VEN (Vlaams Ecologisch Netwerk – Flemish Green Network) and of immovable property (land as well as fixtures) to be considered as woodlands is exempt from inheritance tax and from transfer duties upon death.
12. 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.
13. All donations of movable property inter vivos made under a suspensive condition that is met when the donor deceases, are assimilated to legacies and are subject to inheritance tax and not to donation duties.

**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.

***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	60
75,000.01	175,000.00	50	55	80
More than	175,000.00	65	70	90

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 the first € 12,500 bracket. Moreover, where the net portion inherited by the beneficiary does not exceed € 125,000, this abatement is extended to the second bracket (€ 12,500 - € 25,000). The 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. The total amount of the exemption is imputed to the successive brackets of the net portion liable to inheritance tax, starting with the lowest bracket.
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, between spouses and between cohabitants*

Bracket of the net share in €		Tax rate in %
From	to (including)	Upon lineal relatives and between spouses
0.01	50,000	3
50,000	100,000	8
100,000	175,000	9
175,000	250,000	18
250,000	500,000	24
More than	500,000	30

“Cohabitant” shall be construed as a person being in a situation of legal cohabitation, such as defined in Book III, Title Vbis of the Civil Code.



*Table II - Inheritances between brothers and sisters*

Bracket of taxable amount in €		Tax rate in %
From	to (including)	between brothers and sisters
0.01	12,500	20
12,500	25,000	25
25,000	50,000	30
50,000	100,000	40
100,000	175,000	55
175,000	250,000	60
More than	250,000	65

*Table III - Inheritances between uncles or aunts and nephews or nieces*

Bracket of taxable amount in €		Tax rate in %
From	to (including)	between uncles or aunts and nephews or nieces
0.01	50,000	35
50,000	100,000	50
100,000	175,000	60
More than	175,000	70

*Table IV - Inheritances between any other persons*

Bracket of taxable amount in €		Tax rate in %
From	to (including)	between any other persons
0.01	50,000	40
50,000	75,000	55
75,000	175,000	65
More than	175,000	80

In respect of inheritances between lineal heirs, spouses or cohabitants and between brothers and sisters, the rates of Table I and Table II apply to the share of each assignee in the taxable value of the assets. In respect of the other inheritances, the rates of Table III and Table IV apply to the **aggregate** shares of the assignees in the taxable value of the assets.

Remarks :

1. No inheritance tax is due on any inheritance of which the net amount do not exceed € 1,250.
2. The lineal heirs and the surviving spouse are both entitled to an exemption of € 15,000, which means there is no liability to inheritance tax for this bracket of € 15,000. 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. Where an inheritance devolving to lineal heirs, spouses or cohabitants holds unrestricted ownership of at least a part of the dwelling the testator had been using as his main residence for at least five years before his decease, the net value of that part is, under certain conditions (see art. 60ter of the Inheritance Tax Code applicable to the Region of Brussels-Capital), liable to inheritance tax according to the Table I rates, with the following adjustments :
  - € 0.01 to € 50,000 bracket : 2% instead of 3%
  - € 50,000 to € 100,000 bracket : 5.3% instead of 8%
  - € 100,000 to € 175,000 bracket : 6% instead of 9%
  - € 175,000 to € 250,000 bracket : 12% instead of 18%

In order to determine the progressive inheritance tax applying to the inheritance, the tax base of the inheritance entitled to this tax relief is added to the remainder of the heir's share (see art. 66 of the Inheritance Tax Code applicable to the Region of Brussels-Capital);
6. 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.

### **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**

Investment institutions and companies for the management of investment institutions, as well as credit companies and insurance companies paying certain dividends, granting income or involved in certain insurance activities as defined in art. 161 of the Inheritance Tax Code, are subject to this tax.

The tax is due on the net amount outstanding (investment companies, etc.), on the exempt income from savings deposits (credit institutions), on the mathematical and technical reserves related to life insurance and insurance in respect of investment funds (insurance enterprises) and on a part of the statutory capital (credit institutions and insurance enterprises having taken the form of co-operative companies recognized by the National Council of Co-operation) (Art. 161bis of the Code)).

The tax rate is **0.07%**. Inasmuch as the investment company has attracted capital from institutional and professional investors, the rate is reduced to **0.01%** (Art. 161ter of the Code).

The 0.07% rate will be brought to 0.08% on January 1<sup>st</sup>, 2007.

### **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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### *What is new ?*

- *The tax on stock-exchange transactions and on delivery of bearer securities in respect of the issue of new securities has been abolished.*

*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 ;
- 2° *any repurchase* by an open-end investment company of its own shares, if this transaction relates to *capitalization* shares (this also applies in the case of conversions in capitalization shares, since conversions consist of, on the one side, a purchase and, on the other side, the issue of new securities).

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 and for a number of other transactions.

The applicable tax base (Art. 123 CTASD) :

- for *purchases or acquisitions* : is the amount to be paid by the purchaser, 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;

The tax is levied *both on the sale and on the purchase*. 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 (Art. 122 CTASD).

The rates are as follows (Art. 121 CTASD) :

- 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.

For the repurchase by an investment company of its own capitalization shares (see 2° above) and for all sales and purchases of capitalization shares (see 1° above) the rate is **0.50 %**;

### **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. 'Delivery' has the meaning of: 'the acquisition for a consideration, the conversion of registered securities into bearer securities or the withdrawal of securities which were in open custody. Deliveries to financial intermediaries established in Belgium are not liable to the tax, however (Art. 159 CTASD).

The tax rate is set at **0.60%** (Art. 160 CTASD).

The tax is calculated (Art. 161 CTASD) :

1. in the case of an **acquisition for valuable consideration** : on the amounts to be paid by the purchaser (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, all other insurance policies related to seagoing and inland navigation (except those subject to the 1.40% charge; see further), compulsory liability insurance policies related to motor vehicles and property damage insurance policies related to motor vehicles or compound vehicles used exclusively for the transportation of goods by road and having a maximum allowable mass of not less than 12 tons, 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 i.a. for life insurances (not taken out individually), death insurance, life annuities and temporary annuities, certain collective additional undertakings for disability and liabilities contracted by pension funds (provided every employee has an “equal right” to be in the scheme, see Art. 175<sup>1</sup> CTASD);
- \* **1.40%** : rate for insurance policies related to seagoing and inland navigation, related to the risk of transportation of goods by air or overland, related to liability insurance policies for motor vehicles and to property damage insurance policies in respect of taxis, buses, coaches and vehicles intended for the transportation of goods where the maximum allowable mass exceeds 3.5 tons but is less than 12 tons.

### **5.4. Annual tax on profit-sharing schemes**

Sums divided up by way of profit sharing are liable to this tax (Art. 183bis CTASD) when they are related to life insurance contracts, to life annuities or temporary annuities or to additional pensions built up, by any means but through a life insurance, with an insurer operating in Belgium.

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, when their surface area exceeds 15 dm<sup>2</sup>, 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 amounts to (art. 190 and 191 CTASD):

- € 0.10 per placard when its surface area is less than 1 m<sup>2</sup>;
- € 0.50 per m<sup>2</sup> or fraction of a m<sup>2</sup> when the surface area is 1m<sup>2</sup> or more.

In respect of illuminated signs (and the like), there is an annual tax of five times the abovementioned amounts.



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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 administrative document" form. The *single administrative document* has been designed to cover all movements of goods (importation and exportation).

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).

Some of the boxes are self-copying, so the information needed is provided to all the Member States concerned in one go. That's one of the reasons why most data on the document have to be encoded.

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).

Where certain conditions are met, customs authorities may grant permission for the use of simplified procedures in order to accelerate customs treatment. Examples of simplified procedures are :

- simplified declaration ;
- lodging of declaration prior to presentation of goods ;
- periodic globalisation of declarations ;
- incomplete declaration.

These simplified procedures are applicable to nearly all customs treatments.

### **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 duties, the special excise duties and the VAT (provided it is not deferred) shall, as a rule, be paid at the (customs) office of importation when the declaration for release for free circulation and/or for consumption is validated.

Excise products may however be released by the customs authorities under a duty-suspension arrangement with a view to their placing in a fiscal warehouse.

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. Declaration for release for free circulation and for consumption**

#### **A. Principles**

Declaring goods for **free circulation** is a deed that confers on non-Community goods the customs status of Community goods, through the payment of contingent duties upon importation and the application of the commercial policy measures applying on importations in the European Union.

Declaring goods for **consumption** means that, in addition, all national taxes and duties, such as VAT and excise duties, are paid and that the national provisions in respect of importations are complied with.

Where goods from third countries are intended for the Belgian market, they are usually declared simultaneously for free circulation and for consumption. On the other hand, Community goods are not subject to customs formalities in respect of intra-Community circulation; these movements are subject to the VAT regulations as intra-Community supplies.

However, in respect of intra-Community acquisitions of certain means of transport, customs formalities still have to be gone through, the customs authorities acting in these cases on behalf of the Administration of the Taxation of Companies and of Income (section VAT).

When goods declared for free circulation in Belgium are intended for another Member State, exemption of VAT may be granted in Belgium; the supply of goods is then deemed to be an intra-Community supply. If the exportation to the other Member State they are intended for is not to take place immediately after the declaration for free circulation, the goods have to be stored under a VAT warehousing arrangement.

Excise goods to be sent to another Member State after their declaration for free circulation have to be stored in Belgium under a fiscal warehousing arrangement.

#### **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) (5)

<u>Tobacco products (2) (5)</u>		
or	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.
- (5) The 200 pieces limit in respect of cigarettes also applies to travellers coming from the Czech Republic and Slovenia (till December 31st, 2007), from Slovakia, Hungary and Poland (till December 31st, 2008) and from Lithuania, Latvia and Estonia (till December 31st, 2009). The 100 pieces limit in respect of cigarillos also applies to travellers coming from the Czech Republic (till December 31st, 2006). The 50 pieces limit in respect of cigars also applies to travellers coming from the Czech Republic (till December 31st, 2006). The 250 gram limit in respect of smoking tobacco also applies to travellers coming from the Czech Republic (till December 31st, 2006) and from Estonia (till December 31st 2009).

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.

<u>Tobacco products (1)</u>	
cigarettes (1)	800 pieces
cigarillos (cigars with a maximum weight of 3 g a piece) (1)	400 pieces
cigars (1)	200 pieces
smoking tobacco (1)	1 kg
<u>Alcoholic beverages</u>	
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

(1) see footnote 5, preceding table

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**

About sixty countries (among which all the Member States of the European Union) have signed a convention in order to accelerate transportation of goods by means of road vehicles and containers, by simplifying border controls and formalities.

The goods are transported under cover of a TIR carnet, which is an international customs document that can be used when crossing successive borders.

After controlling the consignment, the customs authorities of the State of departure put their seal on the road vehicle or container. These vehicles and container must be approved by the customs authorities of the State where the owner or hauler lives or is established.

The TIR carnets are delivered in the countries concerned and are guaranteed by the responsible associations approved by the customs authorities. The users of the TIR carnets also have to be approved by the customs authorities and by the responsible associations.

TIR carnets are to be used neither for consignments both starting and ending in the European Union nor for transportation of alcohol and manufactured tobacco. They may be used however for transportation between Greece and other EU Member States, if the consignment passes through the territory of a third country.

The TIR carnet covers the whole customs territory of the European Union. No formalities have to be carried out at the intra-Community borders.

**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).

The NCTS (New Computerized Transit System) has been mandatory since July 1<sup>st</sup>, 2003; except in cases where the emergency procedure applies, and T-documents have been replaced by electronic transit operations. These T-documents are in the case of external Community transit, the T1-document, and for internal Community transit the T2-document. 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 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.

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.

#### **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 ?*

- *Restructuring of taxation of energy products and electricity. The inspection fee on domestic fuel oil and the levy on energy are now included in the excise duties.*
- *Increase in specific special excise duty on cigarettes.*
- *Increase in the rates of the packaging charge.*
- *Lowering of excise duty on non-alcoholic beverages.*

*These taxes are laid down and regulated by various EU directives and national legislation. A number of important provisions are included i.a. in :*

- *the Law of June 10th, 1997, bearing general regulations for excise products, the holding, the movement, and the control thereof (BOJ of August 1st, 1997);*
- *the Programme law of December 27<sup>th</sup>, 2004 (BOJ of December 31<sup>st</sup>, 2004);*
- *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 (BOJ of May 16th, 1997);*
- *the Law of February 13th, 1995 relating to the excise system for non-alcoholic beverages (BOJ of March 11th, 1995);*
- *the Law of February 13th, 1995, relating to the excise system of coffee (BOJ of March 11th, 1995) ;*

*their modifications 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. Are to be distinguished, the (ordinary) excise duties, the special excise duties, the levy on energy (on energy products and electricity) and the inspection fee (on domestic fuel oil). The total excise duty is the sum of these four 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 (and possibly a levy on energy and an inspection fee) levied at the sole benefit of Belgium ; the said Community excise products are alcohol and alcoholic beverages (i.e. beer, wine, other fermented beverages than beer and wine, intermediate products and ethyl alcohol), energy products and electricity and manufactured tobacco;

- 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 applying to these products and relating to the taxation of energy products and electricity.

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. 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.

Movements under the suspension arrangement of excise goods released for free circulation in Belgium must occur between the place where the goods are located at the time they are released for free circulation and a fiscal warehouse situated in Belgium. The shipper of the goods has to comply strictly with certain rules.

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 duties become chargeable at the time of release for consumption and are collected by means of a declaration of release for consumption submitted to the tax authorities not later than Thursday of the week following the reception of the excise 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. A transition period, which can last till December 31st 2009, applies to tobacco products originating from certain "new" Member States (accession to the EU on May 1st 2004), see chapter 6, item 6.2.4.B.

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).

As regards **electricity and natural gas**, the distributor's liability to excise duty arises at the date the products are supplied to the consumer. Where continuous supplies of natural gas or electricity give rise to periodical payments or settlements, the supplies are deemed to take place at the end of each period these payments or settlements are related to.

As regards **coal, coke and lignite**, the excise duty becomes chargeable at the time of delivery to a retailer by companies which have to be registered for that purpose according to the procedures laid down by the Minister of Finance, unless the producer, trader, importer or fiscal representative substitute the registered company for the fiscal obligations imposed upon them. Is deemed to be a retailer, any natural person or legal body delivering coal, coke or lignite to natural persons or legal bodies for their own consumption. The date of delivery to the retailer is deemed to be the date mentioned on the invoice related to the delivery.

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 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. Energy products and electricity***

In respect of energy products and electricity, excise duties comprise the (ordinary) excise duties, the special excise duties, the inspection fee on domestic fuel oil and the levy on energy.

## INDIRECT TAXATION

In € per 1,000 litres at 15 °C, unless otherwise specified

Product	Excise duty	Special excise duty	Levy on energy	Total
<b>A. Leaded petrol</b>	294.9933	256.8177	0	551.8110
<b>B. Unleaded petrol ≥ 98 octane</b>				
1. High-sulphur and high-aromatic	245.4146	305.0150	28.6317	579.0613
2. Low-sulphur and low-aromatic	245.4146	290.1414	28.6317	564.1877
<b>C. Other kinds of unleaded petrol</b>	245.4146	290.1414	28.6317	564.1877
<b>D. Kerosene</b>				
1. Used as motor fuel	294.9933	256.8177	28.6317	580.4427
2. Used as motor fuel for industrial and commercial applications (1)				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes (2)	9.2960	1.2040	0	10.5000
- businesses having entered into agreements or having implemented tradable permit schemes (2)	13.9440	1.8060	0	15.7500
- other	18.5920	2.4080	0	21.0000
3. Used as heating fuel				
3.1. Business use				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	0	0	8.9738	8.9738
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	13.4606	13.4606
- other businesses	0	0	17.9475	17.9475
3.2. Non-business use	0	0	17.9475	17.9475

- (1) Kerosene used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works and vehicles intended for use off the public highway or which have not been granted authorization for use mainly on the public roadway.
- (2) Only for stationary motors and for plant and machinery used in construction, civil engineering and public works.

Product	Excise duty	Special excise duty	Levy on energy	Total
<b>E. Gas oil with a sulphur content exceeding 50 mg/kg</b>				
1. Used as motor fuel	198.3148	134.5942	14.8736	347.7826
2. Used as motor fuel for industrial and commercial applications (1)				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes (2)	9.2960	1.2040	0	10.5000
- businesses having entered into agreements or having implemented tradable permit schemes (2)	13.9440	1.8060	0	15.7500
- other	18.5920	2.4080	0	21.0000
3. Used as heating fuel				
3.1. Business use				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	0	0	5.0000 (3) + 4.2427	9.2427
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	7.5000 (3) + 6.3641	13.8641
- other businesses	0	0	10.0000 (3) + 8.4854	18.4854
3.2. Non-business use	0	0	10.0000 (3) + 8.4854	18.4854

- (1) Gas oil used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works and vehicles intended for use off the public roadway or which have not been granted authorization for use mainly on the public roadway.
- (2) Only for stationary motors and for plant and machinery used in construction, civil engineering and public works.
- (3) Inspection fee

## INDIRECT TAXATION

Product	Excise duty	Special excise duty	Levy on energy	Total
<b>F. Gas oil with a sulphur content not exceeding 50 mg/kg</b>				
1. Used as motor fuel (1) (5)	198.3148	119.7206 (1)(5)	14.8736	332.9090 (1)(5)
2. Used as motor fuel for industrial and commercial applications (2)				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes (3)	9.2960	1.2040	0	10.5000
- businesses having entered into agreements or having implemented tradable permit schemes (3)	13.9440	1.8060	0	15.7500
- other	18.5920	2.4080	0	21.0000
3. Used as heating fuel				
3.1. Business use				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	0	0	5.0000 (4) + 3.5511	8.5511
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	7.5000 (4) + 5.32665	12.82665
- other businesses	0	0	10.0000 (4) + 7.1022	17.1022
3.2. Non-business use	0	0	10.0000 (4) + 7.1022	17.1022

- (1) An exemption of the special excise duty of € 49.5787 per 1,000 litres at 15° C is provided for gas oil used as motor fuel and intended for the needs of the regional public transport companies.
- (2) Gas oil used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works and vehicles intended for use off the public roadway or which have not been granted authorization for use mainly on the public roadway.
- (3) Only for stationary motors and for plant and machinery used in construction, civil engineering and public works.
- (4) Inspection fee.
- (5) Special excise duty of € 91.7206 and total excise of € 304.9090 per 1,000 litres at 15° C for taxis, motor vehicles used for the transportation of disabled people, vehicles designed and constructed for the carriage of passengers and comprising more than eight seats in addition to the driver's seat, and vehicles having a maximum weight of at least 7.5 tons used exclusively for road haulage (programme law of December 27<sup>th</sup>, 2004). This rate is implemented by means of a reimbursement procedure provided for in the law.



INDIRECT TAXATION

Product	Excise duty	Special excise duty	Levy on energy	Total
<b>G. Heavy fuel oil (in € per 1,000 kg)</b>				
1. Business use				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	6.5000	1.0000	0	7.5000
- businesses having entered into agreements or having implemented tradable permit schemes	9.7500	1.5000	0	11.2500
- other businesses	13.0000	2.0000	0	15.0000
2. Non-business use				
	13.0000	2.0000	0	15.0000
<b>H. Liquid petroleum gas (in € per 1,000 kg)</b>				
1. Used as motor fuel				
	0	0	0	0
2. Used as motor fuel for industrial and commercial applications (1)				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes (2)	18.5920	1.9080	0	20.5000
- businesses having entered into agreements or having implemented tradable permit schemes (2)	27.8880	2.8620	0	30.7500
- other businesses	37.1840	3.8160	0	41.0000
3. Used as heating fuel				
3.1. Business use				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	0	0	8.5523 (3) or 8.6762 (4)	8.5523 (3) or 8.6762 (4)
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	12.8285 (3) or 13.0144 (4)	12.8285 (3) or 13.0144 (4)
- other businesses	0	0	17.1047 (3) or 17.3525 (4)	17.1047 (3) or 17.3525 (4)
3.2. Non-business use				
	0	0	17.1047 (3) or 17.3525 (4)	17.1047 (3) or 17.3525 (4)

(1) LPG used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works and vehicles intended for use off the public roadway or which have not been granted authorization for use mainly on the public roadway.

(2) Only for stationary motors and for plant and machinery used in construction, civil engineering and public works.

(3) Butane

(4) Propane

## INDIRECT TAXATION

Product	Excise duty	Special excise duty	Levy on energy	Total
<b>I. Natural gas (€ per MWh)</b>				
1. Used as motor fuel				
1a. total annual supply per end user ≥ 976.944 MWh (upper combustion value)	0	0	0	0
1b. total annual supply per end user < 976.944 MWh (upper combustion value)	0	0	1.1589	1.1589
2. Used as motor fuel for industrial and commercial applications (1)				
2a. total annual supply per end user ≥ 976.944 MWh (upper combustion value)	0	0	0	0
2b. total annual supply per end user < 976.944 MWh (upper combustion value)				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes (2)	0	0	0.5795	0.5795
- businesses having entered into agreements or having implemented tradable permit schemes (2)	0	0	0.8692	0.8692
- other businesses	0	0	1.1589	1.1589
3. Used as heating fuel				
3a. total annual supply per end user ≥ 976.944 MWh (upper combustion value)	0	0	0	0
3b. total annual supply per end user < 976.944 MWh (upper combustion value)				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	0	0	0.5795	0.5795
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	0.8692	0.8692
- other businesses	0	0	1.1589	1.1589

- (1) Natural gas used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works and vehicles intended for use off the public roadway or which have not been granted authorization for use mainly on the public roadway.
- (2) Only for stationary motors and for plant and machinery used in construction, civil engineering and public works.

Product	Excise duty	Special excise duty	Levy on energy	Total
<b>J. Coal, coke and lignite (€ per 1,000 kg)</b>				
1. Business use				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	0	4.3263	0	4.3263
- businesses having entered into agreements or having implemented tradable permit schemes	0	6.4895	0	6.4895
- other businesses	0	8.6526	0	8.6526
2. Non-business use	0	8.6526 (1)	0	8.6526 (1)
<b>K. Electricity (€ per MWh)</b>				
1. Business use				
1a. supplied to end user connected to high-voltage transport or distribution network > 1 kV	0	0	0	0
1b. supplied to end user connected to high-voltage transport or distribution network ≤ 1 kV				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	0	0	0.9544	0.9544
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	1.4316	1.4316
- other businesses	0	0	1.9088	1.9088
2. Non-business use	0	0	1.9088	1.9088

(1) Exemption for coal, coke and lignite used by households (see below, exemptions, item 2, k).

Where intended for use, offered for sale or used as *motor fuel* or *heating fuel*, energy products for which no rate of taxation is specified in the above table (for definitions of these products, see art. 415 of the Programme Law of December 27<sup>th</sup>, 2004) shall be taxed, according to use, at the rate for the equivalent motor fuel or heating fuel.

In addition to the above-mentioned energy products, *any product* shall be taxed as an equivalent to *motor fuel* when it is intended for use, offered for sale or used as motor fuel or as an additive or extender in motor fuels. Likewise, in addition to the above-mentioned energy products, any other *hydrocarbon*, except for peat, shall be taxed at the rate for the equivalent energy product if it is intended for use, offered for sale or used as *heating fuel*.

### Exemptions

1. Exemptions are provided (unless otherwise stipulated) for:
  - a. energy products used for purposes other than as motor fuels or as heating fuels;
  - b. dual use of energy products (=used both as heating fuels and for purposes other than as motor fuels or heating fuel; e.g. the use of energy products for chemical reduction and in electrolytic and metallurgical processes);
  - c. electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes;
  - d. energy products and electricity used for mineralogical processes;
  - e. energy products (except coal, coke and lignite) and electricity used to produce electricity and electricity used to maintain the ability to produce electricity;
  - f. energy products supplied for use as motor fuel or heating fuel for the purpose of air navigation, including private pleasure-flying (the scope of this exemption is limited to the supply of jet fuel); in respect of private pleasure-flying, the exemption is limited to December 31<sup>st</sup>, 2006;
  - g. energy products supplied for use as motor fuel or heating fuel for the purposes of navigation within Community waters (including fishing) and electricity produced on board a craft. For private pleasure craft, the scope of the exemption is limited to a) the supply of gas oil and b) December 31<sup>st</sup>, 2006.
  
2. Further exemptions are provided for the following products used *under fiscal control* (unless otherwise stipulated):
  - a. taxable products used in the field of pilot projects for the technological development of more environment-friendly products or in relation to fuels from renewable resources;
  - b. where produced by a user for private use, electricity a) of solar, wind, wave, tidal or geothermal origin, b) of hydraulic origin produced in hydroelectric installations, c) generated from biomass, from products produced from biomass or from fuel cells (scope of the exemption limited to electricity corresponding to legal provisions in respect of green certificates or of combined heat and power generation);
  - c. energy products and electricity used for combined heat and power generation;
  - d. electricity produced by a user for private use from combined heat and power generation provided the combined generators are environmentally friendly;
  - e. motor fuel used for the manufacture, development, testing and maintenance of aircraft and ships;
  - f. gas oil, kerosene and electricity used for the carriage of passengers and goods by rail;

- g. gas oil, kerosene and heavy fuel oil supplied for use as fuel for navigation on inland waterways (including fishing) including private pleasure craft, and electricity produced on board a craft. In respect of private pleasure craft, this exemption is limited to December 31<sup>st</sup>, 2006.
- h. gas oil, kerosene and heavy fuel oil used for dredging operations in navigable waterways and in ports;
- i. gas oil, kerosene, heavy fuel oil, LPG, natural gas, electricity, coal, coke or lignite used exclusively in agricultural, horticultural or piscicultural works and in forestry (under certain conditions);
- j. waste gas oil, kerosene or heavy fuel oil, where reused as heating fuel, either directly after recovery or following a recycling process (exemption limited to December 31<sup>st</sup>, 2006);
- k. coal, coke, lignite and solid fuels, where used by households;
- l. natural gas and LPG, where used as propellants.

Under certain conditions, where energy products released for consumption in another Member State are either contained in standard tanks of commercial motor vehicles and intended to be used as fuel by those same vehicles or contained in special containers and intended to be used to operate the systems equipping those same containers during the course of the transport, they shall not be subject to excise duty in Belgium.

In order to prevent exempt oils from being used as motor fuel, they shall either be denatured or an amount of not less than 6 grams and not more than 9 grams of Solvent Yellow 124 shall be added per 1,000 litres of mineral oil. Moreover, exempt gas oil, and in certain cases heavy fuel oil, shall be identified by addition of a red pigment.

**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	in €
Beer	0.7933	0.9172	1.7105

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.

## INDIRECT TAXATION

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	in €
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	

### 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	in €
non sparkling wines	0	47.0998	47.0998	
sparkling wines	0	161.1308	161.1308	

- (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  $0.7 \times \text{€ } 47.0998 / 100 = \text{€ } 0.3296986$
- The total excise duty for a 0.7 litre bottle of champagne of an alcoholic strength of 11% vol. is  $0.7 \times \text{€ } 161.1308 / 100 = \text{€ } 1.1279156$

### 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.

Per hectolitre of the end product :

	Excise duty (1)	Special excise duty (1)	in €
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  $0.7 \times \text{€ } 47.0998 / 100 = \text{€ } 0.3296986$
- the total excise duty for a 0.7 litre bottle of sparkling cider of an alcoholic strength of 9% vol. is  $0.7 \times \text{€ } 161.1308 / 100 = \text{€ } 1.1279156$

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 %.

## INDIRECT TAXATION

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 x € 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 :

in €

	Excise duty	Special excise duty	Total
Ethyl alcohol	223.1042	1,437.7824	1,660.8866

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	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 € 14.0880 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 2004, sold at the price of € 4.45, the total amount of taxes is € 3.3367, which means that a pack of cigarettes of 25 pieces cannot be taxed less than € 3.0030. 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 2004, sold at the price of € 3.45, the total amount of taxes is € 1.8943, which means that a pack of tobacco cannot be taxed less than € 1.6102 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.

#### Example

Take the case of a pack of 25 pieces of cigarettes priced € 4.45. 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 € 0.7723. The total *ad valorem* excise duty amounts to 45.84% of the retail price, corresponding to an amount of € 2.0399. The sum of specific excise duty and specific special excise duty amount to € 20.9794 per 1,000 pieces, corresponding to an amount of €  $20.9794 \times 25 / 1,000 = € 0.5245$  per 25 pieces (€ 0.1723 of specific excise duty and € 0.3522 of specific special excise duty).

**7.6.4. Non-alcoholic beverages**

Per hectolitre :

in €

	Excise duty	Special excise duty	Total
Mineral water and assimilated products (1)	0	-	0
Soft drinks or lemonade and other non-alcoholic beverages	3.7184	-	3.7184

(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 € 3.7184 (89) per hectolitre for lemonade also applies to the following beverages :

1. beers such as defined sub 7.6.2.A, where the effective alcoholic strength by volume does not exceed 0.5% vol. ;
2. non-sparkling wines such as defined sub 7.6.2.B, where the effective 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 effective 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, strips, or other means, or having an excess pressure of not less than 3 bars, produced by carbon dioxide in solution ;
  - the alcohol in the end product is obtained entirely through fermentation ;
4. other non-sparkling fermented beverages such as defined sub 7.6.2.C, where the effective alcoholic strength by volume does not exceed 1.2% vol. and where the alcohol in the end product is obtained entirely through fermentation ;
5. other sparkling fermented beverages such as defined sub 7.6.2.C, where the effective 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 other means, or having an excess pressure of not less than 3 bars, produced by carbon dioxide in solution ;
  - the alcohol in the end product is obtained entirely through fermentation.

The rate in respect of fruit juices and vegetable juices with CN Code 2009 amounts to € 0/hectolitre.

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 €

89 This rate will apply as from February 1st, 2005, to the beverages mentioned hereafter. On January 10<sup>th</sup>, 2005 (reference point for this Tax Survey) the applicable rate for these beverages was still € 4.9579/hectolitre.

## INDIRECT TAXATION

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	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.



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**ANNEX TO CHAPTER 7**


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**Codes of the combined nomenclature (CN) of the common customs  
tariff of the European Communities for alcoholic beverages**

<b><u>CN Code</u></b>	<b><u>Description</u></b>
2009	fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter
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



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## CHAPTER EIGHT ENVIRONMENTAL TAXES AND THE PACKAGING CHARGE

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### *What is new ?*

- *Replacement of the environmental tax on drink containers by a packaging charge.*

*Environmental taxes and the packaging charge are the object of art. 91-93 and 95, §4 of the special law of July 16th, 1993 finalising the federal structure of the State (BOJ of July 20th, 1993) and of Book III (articles 369-401bis) of the ordinary law of July 16th, 1993 aimed at finalising the federal structures of the State (BOJ of July 20th, 1993), the amendments thereof and the decrees issued for the implementations of the laws.*

### 8.1. Generalities

*Environmental taxes* 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 environmental taxes by companies liable to registration according to stipulations laid down by the Minister of Finance, except where the manufacturer, the importer, the acquirer or his fiscal representative would act as substitutes for these companies with respect to their tax liability.

Is considered a "retailer", any natural or legal person who supplies products liable to environmental taxes 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 environmental taxes are (90) : disposable cameras; batteries and packages of a certain number of industrial products for professional purposes (ink, glues and solvents).

The *packaging charge* is levied on waste packaging of drinks. It is due at the time drinks (see below) packed in individual containers are released for consumption in the matter of excise duty or, where the packing in individual containers takes place after the drinks are released for consumption in the matter of excise duty, at the time the drinks are brought on the Belgian market.

"Individual container" means any packaging intended to be supplied to the end-user without the packaging to be modified.

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90 For a detailed list of products liable to environmental taxes, see the law of July 16th, 1993 (BOJ of July 20th, 1993), and the amendments thereof.

## 8.2. Rates and exemptions

### 8.2.1. *Packaging charge on packaging of drinks*

The packaging charge is levied on packaging of drinks. Are considered as “drinks”: water, lemonade, beer, wine, vermouth and similar beverages, other fermented beverages, ethyl alcohol, distilled beverages, unfermented fruit juices and vegetable juices (see art. 370 of the ordinary law of July 16th 1993 finalizing the federal structure of the State).

- \* Rate : € 14.5037 per hectolitre of product packed in individual containers.
- \* Exemptions : are exempt, reusable packages, provided evidence is produced that
  - they are re-usable (i.e. they can be refilled at least seven times);
  - they are collected by means of a deposit refund system (minimum € 0.16 for containers of more the 50 centilitres and € 0.08 for containers of not more than 50 centilitres);
  - they are actually being re-used.
- \* No charge is levied on packages made mainly of wood, earthenware, chinaware or crystal.

### 8.2.2. *Environmental tax on disposable cameras*

Rate : € 7.44 € apiece

Exemption : on the condition that 80% of the weight of the cameras collected through photographic labs is re-used or re-cycled in Belgium or abroad.

### 8.2.3. *Environmental tax on batteries*

Rate : € 0.50 per battery,

Except :

- batteries and accumulators designed specifically for use in active medical devices, including active medical appliances to be implanted and batteries and accumulators supplied with these active devices in view of their first use;
- accumulators for the locomotion or transmission of motor vehicles, except where used in toys.



- 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) :

2002	:	60%
2003	:	62.5%
2004 and afterwards	:	65%

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.

**8.2.4. Environmental tax on packages of certain types of inks, glues and solvents for professional use**

These packages are taxable where :

- the products they contain are listed in the annex to this chapter;
- AND their capacity exceeds :
  - for industrial solvents : 5 litres ;
  - for industrial glues : 10 litres ;
  - for industrial inks : 2.5 litres.

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.

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.



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**ANNEX TO CHAPTER 8**

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**List of industrial products the packaging  
of which is liable to environmental tax**

The products referred to in 8.2.4 are :

- printing inks referred to by NACE-Rev 1 Code 24.30;
  - glues referred to by NACE-Rev 1 Code 24.62;
  - 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.

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## CHAPTER NINE TAXES ON LIQUOR STORES

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### *What is new ?*

- *The Act of May 17<sup>th</sup>, 2004 modifying the act of December 28<sup>th</sup>, 1983 related to liquor stores has abolished the business licence tax on establishments selling liquors. But the business licence to sell liquors itself has not been abolished.*

*The provisions related to taxes on liquor stores are : the co-ordinated statutory provisions in respect of establishments selling fermented beverages, such as amended by the Law of July 6<sup>th</sup>, 1967 (BOJ of November 7<sup>th</sup>, 1967), as regards the Flemish Region, by the Decree of December 7<sup>th</sup>, 2001 amending the co-ordinated statutory provisions in respect of establishments selling fermented beverages (BOJ of January 15<sup>th</sup>, 2002) and, as regards the Region of Brussels-Capital, the Order of January 10<sup>th</sup>, 2002 amending the co-ordinated statutory provisions of April 3<sup>rd</sup>, 1953 in respect of establishments selling fermented beverages (BOJ of June 12<sup>th</sup>, 2002), the amendments thereof and the decrees issued for their implementation.*

### **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.



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## CHAPTER TEN

### 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.*
- *The rates of ECT (Excise compensating tax) are lowered.*

*These taxes are laid down and regulated by the Code of taxes assimilated to income taxes and by the decrees issued for its implementation. From an juridical point of view, they are considered direct taxes. But since they are in most cases charged on goods and services, rather than on income, they are discussed in part II (indirect taxes) of the Tax Survey.*

#### **10.1. Road tax**

##### **10.1.1. 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 and also on similar vehicles used for the carriage of goods by road (Art. 3 and 4 of the Code of taxes assimilated to income taxes - CTA).

##### **10.1.2. 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.

### 10.1.3. 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><i>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 :</i></p> $HP = 4 \times \text{cylinder capacity} + \frac{\text{Weight (in 100 kg)}}{4}$ <p><i>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 :</i></p> $4 \times 1.6 + 2.25 = 8.65, \text{ rounded up to } \underline{9 \text{ HP}}.$

### 10.1.4. 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.

### 10.1.5. 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, 2004 till June 30th, 2005.



A. Motor cars, twin-purpose vehicles and minibuses

HP	Tax in € (without surcharges, see 10.1.8)
4 or less	57.00
5	71.28
6	103.08
7	134.64
8	166.56
9	198.48
10	229.92
11	298.32
12	366.84
13	435.12
14	503.52
15	572.04
16	749.28
17	926.52
18	1,103.88
19	1,280.88
20	1,458.24
For each additional HP above 20 HP	79.56

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 (exclusive surcharges, see 10.1.8).

C. Motorcycles

Uniform € 40.44 tax (exclusive surcharges). 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 € 57.19.
- 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 (surcharges are still to be added : see 10.1.8.), 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 MAM 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**

€ 26.64 (exclusive surcharges) when MAM not exceeding 500 kg;

€ 55.44 (exclusive surcharges) when MAM exceeding 500 kg and not exceeding 3,500 kg.

**G. Vehicles liable to a fixed-rate charge**

This tax amounts to € 25.85 (exclusive surcharges) 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 € 25.85 (exclusive surcharges) (Art. 10 CTA).

**10.1.6. 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).

**10.1.7. 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 10.1.4) does **not** apply to the ART and **no** municipal surcharge (see 10.1.8) is levied.

**10.1.8. 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 10.1.3 amounts to :

$$€ 198.48 + € 19.85 = € 218.33$$

Where necessary, the additional road tax (see 10.1.7) or the excise compensating tax (see 10.2) must be added.

**10.1.9. 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 10.2) 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 are applicable from January 1st, 2005 till June 30<sup>th</sup>, 2005.

Cylinder capacity in litres	HP	Rates in €		
		Petrol	Diesel	LPG
0.7 and less	4	62.70	62.70	151.86
0.8 – 0.9	5	78.41	82.73	167.57
1.0 – 1.1	6	113.39	131.27	202.55
1.2 – 1.3	7	148.10	179.30	237.26
1.4 – 1.5	8	183.22	227.98	331.90
1.6 – 1.7	9	218.33	276.65	367.01
1.8 – 1.9	10	252.91	324.55	401.59
2.0 – 2.1	11	328.15	428.95	476.83
2.2 – 2.3	12	403.52	533.36	552.20
2.4 – 2.5	13	478.63	729.79	627.31
2.6 – 2.7	14	553.87	955.87	762.07
2.8 – 3.0	15	629.24	1,089.32	837.44
3.1 – 3.2	16	824.21	1,435.01	1,032.41
3.3 – 3.4	17	1,019.17	1,780.57	1,227.37
3.5 – 3.6	18	1,214.27	2,126.15	1,422.47
3.7 – 3.9	19	1,408.97	2,471.33	1,617.17
4.0 – 4.1	20	1,604.06	2,817.26	1,812.26
4.2 – 4.3	21	1,691.58	2,972.34	1,899.78
4.4 – 4.6	22	1,779.10	3,127.42	1,987.30
4.7 – 4.8	23	1,866.61	3,282.49	2,074.81
4.9 – 5.0	24	1,954.13	3,437.57	2,162.33
5.1 – 5.2	25	2,041.64	3,592.64	2,249.84
5.3 – 5.5	26	2,129.16	3,747.72	2,337.36
5.6 – 5.7	27	2,216.68	3,902.80	2,424.88
5.8 – 5.9	28	2,304.19	4,057.87	2,512.39
6.0 – 6.1	29	2,391.71	4,212.95	2,599.91

## 10.2. 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 10.1.3). The tariffs for tax year 2005 are as follows :

HP	Amount in €	HP	Amount in €	HP	Amount in €
4 and less	0.00	10	71.64	16	610.80
5	4.32	11	100.80	17	761.40
6	17.88	12	129.84	18	911.88
7	31.20	13	251.16	19	1,062.36
8	44.76	14	402.00	20	1,213.20
9	58.32	15	460.08	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 10.1.5.G), are exempt from excise compensating tax (art. 110 CTA).

The excise compensating tax is **not** linked to the yearly indexation (see 10.1.4). Moreover, **no** municipal surcharge (see 10.1.8) is levied (Art. 111 CTA).

### 10.3. 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.*

#### 10.3.1. 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).

#### 10.3.2. 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).

**10.3.3. 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.

**10.3.4. 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

**10.4. The tax on the entry into service (TES)****10.4.1. 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*.

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, 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.

### **10.4.2. 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.

### **10.4.3. 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.



**10.4.4. Rates**

**A. Motor cars, twin-purpose vehicles, minibuses and motor cycles**

HP	kW	Tax in €
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 € 298 tax reduction when they run on LPG. This reduction shall never exceed the amount of the tax due.

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)

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. 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. If this car runs on LPG, the tax amounts to € 867.00 - € 298.00 = € 569.00 upon the first entry into service. Upon registration 15 months after the first registration, the tax amounts to (€ 867.00 - € 298.00) x 90% = € 512.10.

**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>

**10.5. 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.).

**10.6. Gaming machine licence duty**

The annual flat rate tax on automatic gaming 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 €

### 10.7. Tax on employee equity participation and employee participation in profits and enterprise results

This tax (91), 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%.

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91 See also the annex to chapter 2 of part I.

**PART THREE**  
**SOME SPECIAL TAX REGIMES**

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**CHAPTER ONE**  
**SPECIAL CORPORATE INCOME TAX REGIMES**

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**1.1. The advanced ruling procedures**

The law of December 24<sup>th</sup>, 2002 introduced a new legal framework in respect of advanced ruling, which entered into force on January 1<sup>st</sup>, 2003. It replaces all prior provisions related to this matter.

**1.1.1. Definition and general principles**

'Advanced ruling' means the legal action whereby FPS Finance determines, in accordance with the provisions in force, how the law will be applied in respect of a particular situation or operation that has not had an outcome yet at tax level.

Its aim is not to establish new contractual provisions but only to clarify how the law will be applied in a given circumstance and so to guarantee the bona fide taxpayer legal security.

An advanced ruling may not result in a tax exemption or tax reduction in comparison with the normal application of the ruling laws, regulations or administrative provisions.

Advanced rulings shall be accounted for. They are published without the taxpayers' names to be mentioned. Each year the Chamber will be sent a report on the application of the advanced ruling regime. This report shall be published.

**1.1.2. Field of application**

The regime of advanced ruling is enforceable overall. Unlike the previous regimes, which limited the field of application, the act and the order implementing it here consist of a summing-up of cases of non-application.

These cases of non-application are:

- a) the application concerns situations or operations which are identical to situations or operations having had an effect at tax level for the applicant;
- b) the application concerns situations or operations which are identical to situations or operations having been the object of a dispute between the Tax Administration and the taxpayer (administrative appeal or legal action);
- c) the application concerns the implementation of tax law in respect of tax collection or proceedings;
- d) no advanced ruling will take place where essential parts of the situation or operation described in the application concern tax havens that are considered by the OECD to be non-cooperative. Are considered to be such tax havens on 31.12.2004: Andorra, Liechtenstein, Monaco, Liberia and the Marshall Islands.
- e) the application concerns a situation in respect of which it would be inappropriate to give a advanced ruling. A Royal decree considers the following matters as inappropriate:
  - tax rates and computation of taxes;
  - amounts and percentages;
  - assessment procedures;
  - regulations in respect of which a specific recognition procedure or decision procedure exists (included collective procedures);
  - cases in respect of which FPS Finance is not competent to take an unilateral decision and has to consult other authorities, e.g. recognition of companies with a social purpose, admission of non profit-making companies to the list of institutions entitling to deduction of gifts made to them;
  - sanctions, penalties, surtaxes and tax increases;
  - fixed basis of assessment.

### **1.1.3. Procedure**

The application for advanced ruling must be made in writing and must contain: the identity of the applicant, a description of his activities, a comprehensive description of the situation or operation in respect of which the advanced ruling is being applied for and a reference to the legal and regulatory provisions the ruling is to give an upshot for.

If necessary, it must contain a) a complete copy of the applications submitted in respect of the same matter to the tax authorities of other European Member States or of third countries Belgium has concluded a tax treaty with and b) the decisions taken by those authorities in respect of the application.

As long as no decision has been taken, new elements may be added to the application.

In principle, the ruling takes place within a period of three months, but FPS Finance and the applicant can come to terms about a shorter or longer period.



In principle a ruling covers a five-year period, unless its object justifies another time limit.

Once a decision has been taken, FPS Finance is bound by it, except in the following situations:

- a) where the requirements to be fulfilled in respect of the advanced ruling, are not;
- b) where the situation or operations have been described incompletely or incorrectly by the applicant;
- c) where essential elements of the operation have not been realized in the way the applicant has described them;
- d) where provisions in agreements, in common law or in national law related to the situation or operation the ruling is being applied for, are altered;
- e) where the advanced ruling appears not to be conform with the provisions of the agreements, of common law or of national law.

Moreover, an advanced ruling ceases to be applicable when the principal effects of the situation or operation it gives a decision about, are modified by one or more related or subsequent elements attributable directly or indirectly to the applicant.

### **1.2. Co-ordination centres (92)**

Any registered Belgian company or any Belgian subsidiary of a registered foreign company can enjoy the tax arrangements relating to co-ordination centres if it fulfils the following conditions:

- it must be part of a group whose consolidated capital and reserves reach € 24 millions and whose consolidated annual turnover reaches € 240 millions;
- its 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;
- it must employ the equivalent of 10 full-time workers within two years after the starting-up of the company.

The principal activities of co-ordination centres are the following:

- financial operations and cover of risks resulting from fluctuations of exchange rates and interest rates;
- insurance and risk management;
- scientific research;
- administration and accounting;
- advertisement and marketing;
- any other activity the nature of which is essentially preparatory or auxiliary.

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92 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.

Co-ordination centres are subjected to the following tax regime:

- exemption from the proportional registration duties on capital investment;
- calculation of the taxable profit by a **cost-plus** method, based on the **aggregated expenses or operating costs**;
- the percentage of the 'cost-plus' is calculated **separately for each case** on the basis of the nature and the specificities of the activities;
- the basic taxable amount may not be less than the sum of the disallowed expenses (excl. CIT and non-resident CIT) and the abnormal or benevolent advantages received by the centre;
- the annual tax on employed personnel (see page 131) is set off against CIT, but excesses, if any, are not reimbursed.

Recognition of co-ordination centres is granted for renewable periods of 10 years, but decisions in respect of the cost-plus percentage only for five years.

The tax regime applying to co-ordination centres will come to an end on December 31, 2010. No new centres shall be recognized from now on. Centres recognized before December 31, 2000 are allowed to enjoy the regime till the expiration date of the recognition but centres whose recognition expires before the end of 2010 are not allowed a renewal of their recognition.

### 1.3. 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 enjoyed a special tax regime enacted in administrative regulations (93).

This tax regime stays in force in respect of recognitions granted but has been replaced, since 1.1.2003, by the general tax regime of 'advanced ruling' described sub 1.1.

### 1.4. Service centres (94)

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.

Subject to recognition, they were entitled to a special tax regime. This regime stays in force in respect of recognitions granted but has been replaced, since 1.1.2003, by the general tax regime of 'advanced ruling' described sub 1.1.

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93 Circular letter Ci.RH 421/463.062 of November 30th, 1994, Tax Bulletin n° 745, January 1995.

94 Circular letter Ci.RH 421/486.766 of 26.07.1996, Tax Bulletin, N° 763, August 1996.

### **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 (95) 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. Attribution of income**

- The income 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 income 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" (i.e. a closed-end UCIT which invests in unlisted companies) 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. Income attributed to resident natural persons**

Income from a capitalization open-end UCIT constitutes non-taxable income for private savers (96).

The withholding tax on the income from distribution shares of an open-end UCIT and a closed-end UCIT is definitive.

#### **1.5.4. Income attributed to resident companies**

Income from a capitalization open-end UCIT, income 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 income 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.

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95 Including the withholding taxes on the income which it collects.

96 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.

### **1.5.5. 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.

### **1.6. Private PRICAFs**

Private PRICAFs are private (i.e. unquoted) collective investment undertakings, aimed at the promotion of private investments in unlisted companies, whether from Belgian or from foreign origin.

#### **1.6.1. Regulatory framework of PRICAFs**

A PRICAF can take the shape of a public limited company (Plc), a limited partnership or a limited partnership with a share capital and is established for a period not exceeding 12 years. It attracts deposits with private investors. Each of the latter must invest not less than € 250,000 in cash. Another requirement is that at least 80% of the voting rights of the PRICAF is held by shareholders owning each not less than 4% and not more than 16% of the voting rights. The shareholders may be neither members of the same family nor in-laws.

PRICAFs invest the attracted deposits in financial instruments issued by unlisted companies; liquid assets or cash-equivalent items may be held only incidentally or temporarily. They may not invest in companies the shareholders have direct or indirect ties with.

### **1.6.2. Tax regime of PRICAFs**

The sums invested are liable to a general fixed duty of € 25, which replaces the proportional registration duty of 0.5%.

The base of the PRICAFs' liability to CIT is limited to the following elements:

- abnormal or benevolent advantages;
- disallowed expenses, except depreciations on share participations;
- compensation for missing coupons.

The tax is computed at the normal rate (33.99%).

Where a PRICAF buys back shares, the repurchase bonus is not liable to the 10% withholding tax on movable property. The same is true in respect of liquidation bonuses.

PRICAFs are exempt from withholding tax on any income from investment except dividends. Any withholding tax levied on income received is deductible and refundable unconditionally.

### **1.6.3. Tax regime of investors**

#### **A. The investor is a private person**

Dividends distributed by PRICAFs are liable to a 25% withholding tax on movable property, which is at the same time a final tax. But PRICAFs are exempt from that withholding tax inasmuch as the dividends distributed originate from gains on shares realized by the PRICAFs.

Capital gains realized by investors-private persons on their shares in a PRICAF are tax exempt.

#### **B. The investor is a company**

The withholding tax is levied under the same conditions as for private persons. But here the withholding tax is not a final tax; it is deductible from the CIT due by the investor and refundable.

Dividends received from a private PRICAF entitle to the participation exemption inasmuch as the dividends distributed originate at a previous stage (at the level of the PRICAF) from participations meeting the conditions for deductibility (transparency principle).

In the same way gains realized on the participation in a private PRICAF are tax exempt inasmuch as the company has invested its total assets (excluding liquidities and incidental investments amounting to not more than 10% of the total balance value) in shares the income of which entitle to the participation exemption or in shares of other private PRICAFs.



## CHAPTER TWO PENSION SCHEMES AND LIFE INSURANCES

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### *What is new ?*

*From now on, sums invested in retirement savings funds must be denominated in one of the currencies of the European Economic Area and 80% at least of them in euro. This provision replaces the obligation to invest in Belgian securities.*

### **2.1. Pension schemes**

#### **2.1.1. Forms of pension schemes**

Any taxpayer can join a pension scheme, using one of the following formulas. Whatever the formula, the deposits must be made in Belgium and the instalments must be final.

#### **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 € 610 per taxpayer and per calendar 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 (97).

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97 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.

- 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.
- 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" (98).

Where a reduction for pension plans is granted, no reduction is available for the purchase of employer's shares.

### **2.1.3. Harmonization with European law**

From now on, retirement savings funds must mainly invest in securities emitted within the European Economic Area and denominated in euro or in the currency of one of the Member States of the European Economic Area. This obligation has come into force since April 1<sup>st</sup> 2004 and replaces the former obligation to invest in Belgian securities. At least 80% of the investments must be denominated in euro.

### **2.1.4. 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.



## SOME SPECIAL TAX REGIMES

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### TAXATION REGIME

Since 1993, the capital is 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**.

*Table 2. 1  
Taxation of theoretical capital built up through pension schemes*

<b>1. Withdrawal after the age of 60 (*)</b>	tax set at <b>16.5%</b> for premiums paid until 31.12.1992	tax set at <b>10%</b> for premiums paid as from 01.01.1993
<b>2.1. Withdrawal before the age of 60, provided the four following conditions are met :</b> <ul style="list-style-type: none"> <li>- <b>the withdrawal occurs at the participant's (early) retirement (**);</b></li> <li>- <b>the pension scheme duration of ten years is met;</b></li> <li>- <b>all deposits have been kept on the account for five years at least;</b></li> <li>- <b>there were at least five instalments.</b></li> </ul>	tax set at <b>16.5%</b> for premiums paid until 31.12.1992	tax set at <b>10%</b> for premiums paid as from 01.01.1993
<b>2.2. Withdrawal before the age of 60 and at least are of the four conditions is not met</b>	<b>progressive rate</b> as regards premiums paid until 31.12.1991	tax set at <b>33%</b> for premiums paid as from 01.01.1992

(\*) *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 retiring age is 65 for men and 63 for women.*

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.

### **2.1.5. 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 (99) :

- 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 (100), to tax reductions in respect of premiums paid under an individual life insurance.

This reduction can be granted in the form of an increased tax reduction for savings for house purchase or in the form of a common tax reduction for long term savings. The increased reduction is granted, for each spouse separately, at the highest marginal rate applying to that spouse, the common reduction being computed at the special average rate.

Where premiums paid for individual life insurances are used **exclusively** (by the saver) in order to secure a mortgage loan entered into with a view to building, buying or improving a house in Belgium which is his **only dwelling**, they entitle to the increased reduction.

The premiums paid only qualify for the increased tax reduction in respect of the first bracket of the amount of the loan; this bracket is determined in function of the year the contract was entered into and 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. (see Chapter 1, Table 1.6, page 24).

Premiums paid are only taken into consideration for one of the tax reductions inasmuch as they do not exceed the following limits :

- 15% of the first € 1,520 bracket of net earned income, plus 6% of the remainder;
- a maximum amount of € 1,830.

The part of the premiums that doesn't entitle to the increased tax reduction for savings for house purchase can be carried over and entitle to the reduction for long term savings.

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99 Are concerned here, the common insurance products offered by insurance companies, the so-called "21st branch".

100 See Part I, Chapter 1, page 23.

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### **2.2.2. Tax treatment of the benefits**

Benefits are only chargeable to tax if they have occasioned a fiscal advantage. Paid out capital is only liable to tax if the taxpayer has applied for a tax reduction.

#### **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 or, where the capital is surrendered before that time and the taxpayer has reached the age of 60, at the time of allotment.

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** (101).

Capitals and surrender values are taxed differently according to whether the contracts are or are not used for the reinstatement or the securing of a mortgage loan. The two situations are described hereafter.

#### **CONTRACTS USED FOR THE REINSTATEMENT OR THE SECURING OF A MORTGAGE LOAN**

Are concerned here :

- 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.**

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101 See Annex 2, Tax Bulletin, N°. 765, November 1996.

## SOME SPECIAL TAX REGIMES

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These capitals and surrender values are taxed in the form of a notional annuity when they are paid out 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 notional annuity is a conversion annuity calculated in function of the age reached by the beneficiary at the time the capital or surrender value is paid out.

The conversion rates are the following :

*Table 2. 2*  
*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

The conversion annuity is taxable (and aggregated with the other taxable income) for

- 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.

### **CONTRACTS NOT USED FOR THE REINSTATEMENT OR THE SECURING OF A MORTGAGE LOAN**

A distinction should be made here between, on the one hand, contracts paid out at their normal termination date or assimilated dates and, on the other hand, contracts paid out before the legal date. 'Date assimilated to the legal date' means that the payment occurs upon the death of the life-assured or in the course of the five years preceding the termination of the contract.

**Table 2. 3**  
**Taxation of capital or surrender value at the liquidation of life insurance contracts - contracts not used for a mortgage loan**

<b>1. Liquidation at normal termination or assimilated date</b>	separate assessment (16.5% rate) for premiums paid before 01.01.1993	separate assessment (10% rate) for premiums paid from 01.01.1993
<b>2. Liquidation before legal date</b>	assessment at progressive rate for premiums paid before 01.01.1992	assessment at 33% rate for premiums paid 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 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 » (102).

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.

### **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 :

**Table 2. 4**  
**Taxation upon the liquidation of the capital of a group insurance**

<b>1. Liquidation of capital or surrender value upon normal termination (or assimilated date) :</b>		
- at maturity of the contract - within five years preceding maturity - upon the death of the insured - upon retirement or early retirement of the insured - at a normal age of complete and final cessation of the professional activity in respect of which the capital was built up (103)		
	Contributions made till 31.12.1992 (former deduction regime)	Contributions made from 01.01.1993 onwards (tax reduction regime)
employer's contributions	separate assessment, <b>16.5%</b> rate	separate assessment, <b>16.5%</b> rate
employee's contributions	separate assessment, <b>16.5%</b> rate	separate assessment, <b>10%</b> rate
<b>2. Liquidation of capital or surrender value before legal date:</b>		
employer's contributions	assessment at <b>progressive rate</b>	assessment at <b>progressive rate</b>
employee's contributions	assessment at <b>progressive rate</b>	assessment at <b>33%</b> rate

Upon liquidation of the capital, a special 3.55% social security contribution is levied for the benefit of the National Institute for Sickness and Invalidity Insurance.

**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 special 3.55% social security contribution for the benefit of the National Institute for Sickness and Invalidity Insurance is levied on the annuity paid.

**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.

**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.

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103     Are concerned here certain professional activities which are generally carried out for a short period of time only, such as professional sports.

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 1.6, 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 (104).

**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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104 See above, page 212.



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