

## PREFACE TO THE JULY 2010 ISSUE

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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) and legal entities income tax (LEIT). The non-resident income tax (NRIT) is not dealt with: it is a very 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. This first part also deals with special corporate income tax regimes (advance ruling procedures, coordination centres, SICAV, etc.).

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

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

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

- **to 2009 income (tax year 2010)** in the matter of direct taxation, with the exception of withholding taxes (part I, chapters 1 to 4);
- **on 1 July 2010** as far as indirect taxation (part II) and withholding taxes (part I, chapters 5 to 7) are concerned.

The authors of this publication are S. HAULOTTE and Ch. VALENDUC (Part I) and E. DELODDERE (Part II). They would like to thank their colleagues from the Research and Information Department and from the Tax Administrations for the preliminary work, the 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 authorised to answer queries with regard to the application of tax legislation to individual cases. The circulars this Tax Survey refers to are available in the "Fiscal database" (Fisconet*plus*) on the homepage of the website of the FPS Finance (Fiscal discipline – Income tax – Administrative directives and comments – Circular letters"; only available in French and Dutch).

The Tax Survey is also available in Dutch and French. It 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.

July 2010

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(Editors)



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<b>Personal Income Tax</b>				
Legal base	Income Tax Code 1992, articles 3-178. Law of 10.08.2001 (BOJ 20.09.2001) with reform of personal income tax.			
Who sets	the tax rate	the tax base	reliefs	
	Central authority	Central authority	Central authority (*)	
	(*) Comments about reliefs: lump sum credit granted by the Flemish Region			
Beneficiary	Central authority Regional authority (*) Local authority (**) Social security Others (***) Securitisation since 2005-2006 (for withholding tax on earned income, assessment rolls and fines and miscellaneous) (*) A substantial part of the revenue is earmarked and transmitted to regional authorities (Regions and Communities). (**) Municipal surtaxes are calculated at rates specific to each municipality. (***) Since 2005 a small amount has been allocated to the "household fuel oil fund" and since 2007 another small amount has been allocated to the "Fonds MEVA / MMA-Fonds", i.e. the "environmental measures relating to motor vehicles" fund. Since 2009, part of the withholding tax on earned income has gone to the alternative financing of social security. Remark: Regional tax rebates have been introduced in the Flemish Region (applicable from income year 2007 onwards).			
Tax collector	Federal Public Service Finance			
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue (*)	
	Withholding tax on earned income Advance payments PIT assessment roll Non-resident PIT (on assessment) Others (fines and miscellaneous) Special social security contribution	37,586.5 1,691.7 -5,399.1 119.3 75.30 261.56		
	<b>TOTAL PIT</b>	<b>34,335.26</b>	10.2%	39.9%
	(*) Total tax revenue levied by the Federal State and by the Flemish Region (for the withholding tax on real estate)			

Corporate Income Tax			
Legal base	Income Tax Code 1992, articles 179-219 <i>bis</i> . Programme law of 24.12.2002 (BOJ 31.12.2002) with reform of corporate income tax.		
Who sets	the tax rate	the tax base	reliefs
	Central authority	Central authority	Central authority
Beneficiary	Central authority Social security Others (*)  (* ) Amount allocated to the 'Electricity and Gas Regulatory Commission' (CREG – "Commission de Régulation de l'Electricité et du Gaz") since 2009		
Tax collector	Federal Public Service Finance		
Tax revenue	2009 tax revenue in millions of euro		Tax revenue as % of GDP
			Tax revenue as % of total tax revenue
	Advance payments	6,701.8	
	Withholding tax on movable property	621.6	
	CIT assessment roll	794.2	
	Non-resident CIT (on assessment)	62.3	
Others (fines and miscellaneous)	37.6		
<b>TOTAL CIT</b>	<b>8,217.5</b>	<b>2.4%</b>	<b>9.5%</b>

<b>Withholding tax on real estate</b>			
Legal base	Income Tax Code 1992, article 7 to 16, 251-260 <sup>ter</sup> and 471-504.  For rates: <ul style="list-style-type: none"> <li>- Decree 22.10.2003 (BOJ 19.11.2003), 27.04.2006 (BOJ 15.05.2006) and 10.12.2009 (BOJ 23.12.2009) for the Walloon Region;</li> <li>- Decree 19.12.2003 (BOJ 31.12.2003) for the Flemish Region;</li> <li>- Order 08.12.2005 (BOJ 02.01.2006) for the Brussels-Capital Region.</li> </ul>		
Who sets	the tax rate	the tax base	reliefs
	Regional authority	Regional authority	Regional authority
Beneficiary	Regional and local authorities  Comments: The local surtax is a multiple of the revenue perceived by regional authorities. Both provinces and municipalities receive surtaxes.		
Tax collector	The withholding tax on real estate is not levied in the same way in the different Regions. Since 1999, the withholding tax on real estate has been levied by the Flemish Region itself. As far as the Walloon Region and the Brussels-Capital Region are concerned, the tax is still levied by the Federal State.		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue
	125.2	0.04%	0.15%

Withholding tax on income from movable property			
Legal base	Articles 17-22 and 261-269 Income Tax Code 1992.		
Who sets	the tax rate	the tax base	reliefs
	Central authority	Central authority	Central authority
Beneficiary	Central authority and social security Securitisation since 2006		
Tax collector	Federal Public Service Finance		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue
	2,656.2	0.8%	3.1%



**Withholding tax on earned income and advance payments**

Legal base	<i>Withholding tax on earned income:</i> Royal Decree implementing the Income Tax Code, Appendix III (Scales and rules applicable to the calculation of the withholding tax on earned income); Income Tax Code 1992, articles 270-275 and 296. <i>Advance payments:</i> Income Tax Code 1992, articles 157-168, 175-177 and 218; Royal Decree implementing the Income Tax Code, articles 64-71.		
Who sets	the tax rate	the tax base	reliefs
	Central authority	Central authority	Central authority
Beneficiary	See Personal Income Tax for further details		
Tax collector	Federal Public Service Finance		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue
	Withholding tax on earned income	37,586.5	11.1%
	Advance payments (made by individuals or companies)	8,393.5	2.5%
	Maribel funds	22.0	0.01%



## CHAPTER ONE PERSONAL INCOME TAX (PIT)

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### *What is new?*

- *The tax credit for energy saving investments has been extended to interests on green loans and to wall and ground insulation.*
- *New distribution between spouses of the tax credit for energy saving investments and temporary conversion of the tax credit for insulation work into a refundable tax credit.*
- *The tax credit "Internet for everyone" has been reintroduced.*
- *The tax credit for unemployment benefits is now granted per spouse and no longer per household.*
- *New tax credits at regional level: for renovation agreements in the Flemish Region and for the purchase of shares or bonds of the "Caisse d'Investissement de Wallonie" (Walloon Investment Fund).*

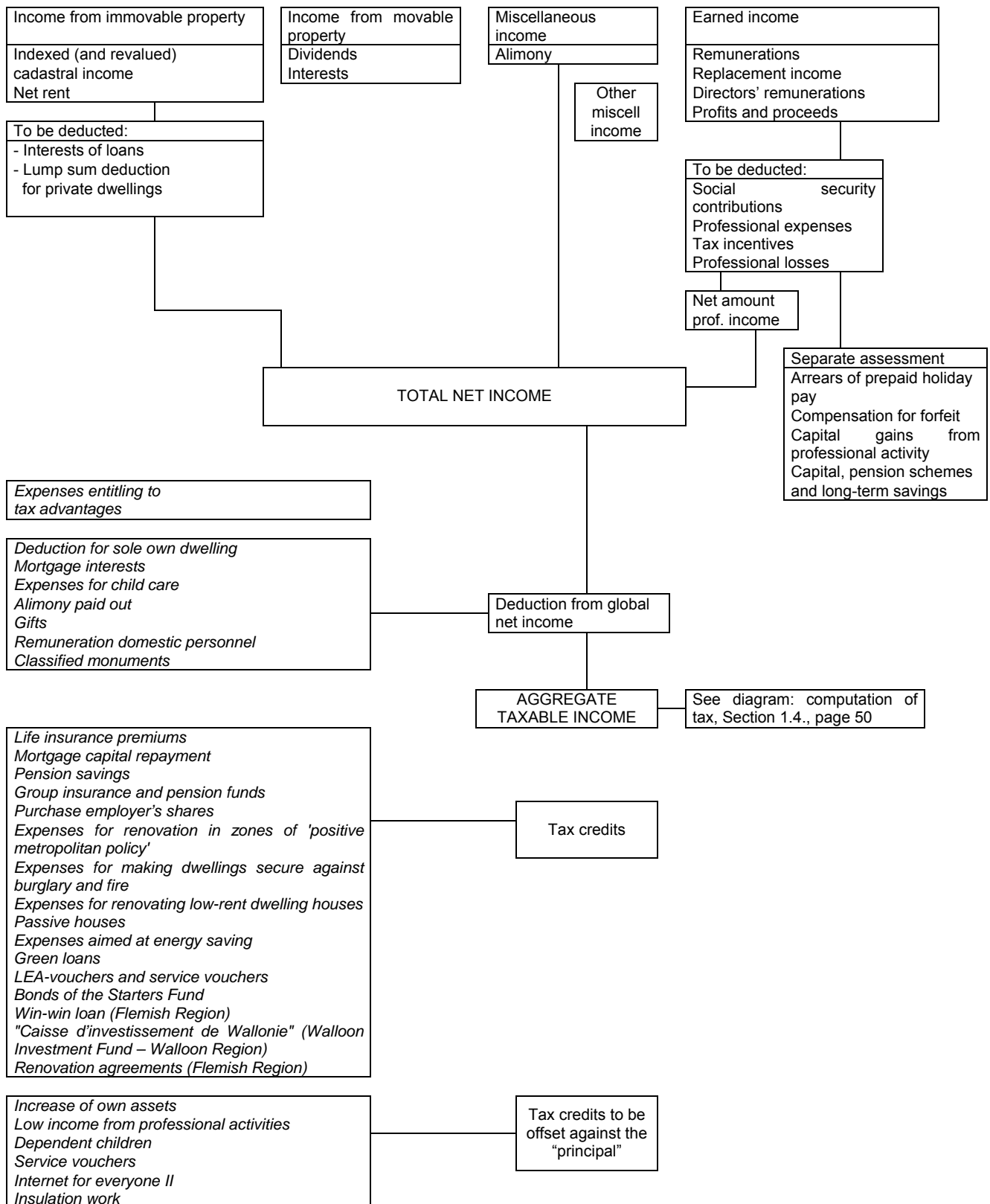
In this chapter the main features of the Personal Income Tax are explained in **four steps**.

- 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 exempted 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 tax advantage**; the latter can be granted as an amount deducted from the taxable income or as a tax credit. 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 zero-rate band that takes into account the taxpayer's family situation, and the tax credits 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.

PERSONAL INCOME TAX (PIT)

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 are considered inhabitants of the Kingdom.

"Domicile" refers to a factual situation characterised 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 1 January of the tax year (1 January 2010 for 2009 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) termination 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. If the aggregate assessment is not expressly stipulated, the separate assessment will automatically apply.

## 1.2. Determination of the net income

The taxable income includes 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 (i.e. after deduction of expenses and losses): 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, where remaining taxable, is granted a lump sum relief and the advance tax payment on property 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. For the year 2009, the adjustment coefficient is 1.5461.

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	Since 1 January 2005, the cadastral income of the dwelling house is no more taxable, except if interests on a loan contracted before 1 January 2005, are still deducted.
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 3.88 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 **land**, 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 lump sum 10% deduction for expenses,
- as for farm rent, the taxable amount is the cadastral income.

#### **DEDUCTIBLE INTEREST OF LOANS**

Interest on loans is 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 interest 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 interest may be granted (1). This deduction remains applicable to loans contracted before 1 January 2005.

Where the loan entitles to **the deduction for sole own dwelling** (2), the deductible interest of loan are therein included and are **not deducted from the real estate income**.

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 (3). Of course, this deduction is only granted if a taxable cadastral income remains. It is inflation adjusted according to the same arrangements as the cadastral income. For 2009 income, this deduction amounts to 4,640 euro, with the following increases:

- 390 euro for each dependent person,
- 390 euro 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 32,530 euro, 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 exceed his taxable cadastral income, the balance is deducted from the other spouse's cadastral income within the limits of the amount thereof.

### Examples

- a. *A childless couple jointly owns a dwelling house whose indexed cadastral income amounts to 1,000 euro. The loan was raised before 1 January 2005 and does not entitle to the deduction for sole own dwelling. Their remaining net income amounts respectively to 8,000 euro and 7,000 euro. Each spouse is entitled to a deduction limited to his/her taxable cadastral income, i.e. 500 euro.*

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1 See page 37.

2 See hereafter on page 34.

3 The lump sum deduction can also be applied to the own dwelling located within the European Economic Area. It will be calculated on the rental value of the dwelling abroad or on the total amount of the rent and the rental benefits.



- b. Same situation as in (a), but now the indexed cadastral income amounts to 5,000 euro. Each spouse is entitled to a deduction limited to his/her taxable cadastral income, i.e. 2,500 euro.
- c. A couple with three children jointly owns a dwelling house whose indexed cadastral income amounts to 11,000 euro. The claimant's professional income is 25,000 euro, his spouse's is 40,000 euro. The standard deduction is computed as follows:
- Claimant:  $4,640 \text{ euro} + (3 \times 390 \text{ euro})/2 = 5,225 \text{ euro}$
- Claimant's spouse:  $4,640 \text{ euro} + (3 \times 390 \text{ euro})/2 = 5,225 \text{ euro}$ .
- The taxable remainder is 275 euro for each spouse. The claimant is entitled to an additional deduction of 138 euro. His spouse, whose income exceeds 32,530 euro, 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 taxable cadastral income of the taxpayer's principal private dwelling is creditable against that individual's final income tax liability. Moreover, the withholding tax must be actually due. Consequently, there is no tax credit for real estate income where the deduction for sole own dwelling applies or where there is no more deductible interest of loan. 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 corporate executive, the amount of the rent and rental benefits received can be **requalified** and classified as **earned income**: the part exceeding 6.467 times the cadastral income stops being considered income from immovable property and becomes a director's remuneration (4).
- 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 16<sup>th</sup> day of the month.  
The same rule applies where the cadastral income is modified in the course of the year.

4 i.e. 5/3 of the "revalued" cadastral income, that is to say multiplied by 3.88.

- 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 (5).
- 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 and assimilated income**

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

- income for 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 for 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.

According to the related fiscal regime, copyright is assimilated to income from movable property. The regime for copyright is described in point D hereafter.

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

#### **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 exempted from the withholding tax on income from movable property but liable to PIT (6);
- 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.

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

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

C.     Non-taxable income from movable property

The most frequently occurring cases are the following:

- the first bracket of 1,730 euro of income from ordinary savings accounts, **per spouse**;
- the first bracket of 170 euro of income from capital invested in co-operative companies recognised by the National Co-operation Council, or in companies with a social objective, **per spouse**.

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 exempted from real and personal taxation or from all forms of taxation.

D.     Copyright

The income concerned is income from the cession or concession of copyright and related rights, as well as legal or compulsory licences, referred to in the Law of June 30<sup>th</sup>, 1994 on copyright and related rights or in similar provisions of foreign law.

Non-professional copyright is still considered as income from movable property and is liable to a final withholding tax on movable property. However, copyright from a professional activity is considered as income from movable property for the first 51,920 euro bracket: the withholding tax is also a final tax.

The part of copyright exceeding 51,920 euro is taxable as professional income. The withholding tax is not a final tax but is credited against PIT liability.

The taxable amount results from the application of a cost amount calculated as follows:

- 50% on the first 13,840 euro bracket;
- 25% on the bracket between 13,840 and 27,690 euro;
- 0% above.

E.     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 and assimilated income**

DIVIDENDS	
From shares issued as from January 1 <sup>st</sup> , 1994 by a public call for funds	15%
From shares issued as from January 1 <sup>st</sup> , 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, or distributed by companies of which a part of the capital has been injected by a PRICAF (*)	15%
From dividends distributed by a cooperative participation company in the context of a participation scheme (Act of May 22, 2001 concerning employee equity participation and employee participation in the capital and the profits of their enterprise).	15%
From other shares	25%
INTEREST AND OTHER INCOME FROM CAPITAL AND MOVABLE PROPERTY	
Interests from securities issued as from March 1 <sup>st</sup> , 1990	15%
Other income from capital and movable property	25%
ASSIMILATED INCOME	
Copyright	15%

(\*) *And of which more than 50% of the shares, representing the majority of voting rights, are in the hands of natural persons.*

**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, the additional municipal surtax must be added to the tax amount.

### **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 (7).

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

7 Rates : see Table 1.14, page 59.

**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 is taxable after deduction of actual expenses.

**PRIZES AND SUBSIDIES**

Prizes, subsidies, annuities or pensions allocated to scholars, authors or artists by Belgian or foreign public authorities or non-profit public bodies (8) are also subject to taxation as "miscellaneous income".

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

There is no tax rebate for annuities and pensions. Prizes and subsidies (9) are only taxable in as far as they exceed 3,460 euro.

**ALLOWANCES TO RESEARCH WORKERS**

Are also considered as miscellaneous income, personal allowances from the exploitation of a discovery paid or granted to research workers by universities, "hautes écoles" (non-university tertiary education), the "Federaal Fonds voor Wetenschappelijk Onderzoek - Fonds fédéral de la Recherche scientifique", the "FRS-FNRS" (Fonds de la Recherche Scientifique-FNRS) or the "FWO-Vlaanderen" (Fonds voor Wetenschappelijk Onderzoek-Vlaanderen).

These allowances are taxable with respect to their net amount, i.e. after deduction of 10% costs from the gross amount.

**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.

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8 Unless these organisations are recognised by a Royal Decree deliberated in the Council of Ministers.

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

## PERSONAL INCOME TAX (PIT)

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

The taxable amount is the amount received minus actual expenses or minus a lump sum 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 (10),
- the alienation (generally a sale) occurs less than five years after the acquisition for valuable consideration, or less than three years after a gift insofar as 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 LAND**

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.

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.

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10 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 or to the deduction for sole own dwelling; see supra, page 16.

**CAPITAL GAINS REALISED 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 REALISED 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 foreign company located outside the European Union 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 (11).

**1.2.4. Earned income**

There are seven categories of professional earnings:

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

The taxpayer declaring profits and proceeds can remunerate the assisting spouse. This remuneration coexists with the "assisting spouse quota", but they cannot apply concurrently. The remuneration constitutes for the assisting spouse a source of earned income from independent activity.

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11 The revaluation only concerns acquisitions realised before 1949.

The net income is determined in six stages:

- deduction of social security contributions;
- deduction of actual or lump sum professional 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, exempted 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** includes wages, salaries and other remunerations received with respect to a professional activity. Is not included, the repayment of expenditures characteristic of employers.

A temporary exemption of PIT is given for **premiums for innovation** paid or granted from 01.01.2006 and covers the years 2009 and 2010.

The exemption is subject to some conditions being fulfilled. Amongst these conditions: these premiums must be granted for innovation which adds real value to the normal activities of the employer granting the premium, and the number of workers to whom these premiums are granted cannot exceed 10% of the number of workers employed by the company per calendar year (and maximum 3 workers for companies with less than 30 workers).

**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 exempted 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 euro per kilometre for the distance between home and work, this distance being limited to 100 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 350 euro	The allowance made by the employer is liable to tax. Actual expenses: maximum 0.15 euro per kilometre.



The mileage allowance for cycling commuters is also exempted from tax up to 0.20 euro 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 850 euro.

As regards remunerations relating to activities performed in the framework of **local employment agencies, 4.10 euro are exempted from tax for each hour worked**.

Earned income includes the advantages of any kind obtained in respect of professional activities: this principle is extended to all categories of professional income. However, some advantages are not taxable, e.g. the employer's financial intervention in meal, sport, culture and "green" vouchers. These vouchers must be registered and granted in the framework of a collective agreement either sectoral or concluded within the company. If there is no collective agreement, a written individual agreement is required.

The "wage bonus" is tax exempted. The bonus is an additional allowance granted to each worker or group of workers in the company and linked to the results of the company (more specifically to previously defined goals, financial or not, which can objectively be ascertained). The rules must be enshrined in a collective agreement or an accession procedure must be used for companies without union delegation. This procedure is limited to workers entitled to the bonus and must be submitted to the sectoral joint agreement.

The tax exemption is granted for maximum 2,314 euro per worker. In addition, there is also an exemption from personal social security contributions and employers' contributions are limited to a special contribution of 33%.

The portion of the bonus exceeding 2,314 euro is considered as wage.

There is also a special tax regime for **sportsmen and volunteers** (referees, trainers, coaches and guides).

The income earned from this activity by sportsmen or volunteers aged 26 at least, is taxed separately at 33% for a first 17,030 euro gross bracket, provided those sportsmen or volunteers have a higher income from another professional activity. This regime does not apply to company managers' remunerations. Remunerations granted to sportsmen aged 16 to 25 are taxed separately at 16.5% for the first 17,030 euro gross bracket.

Allocation granted to **artists** and considered at social level as lump sum settlement of expenses for performing "small-scale" artistic activities, are exempted to 2,248.78 euro per calendar year. This tax exemption follows the exemption regime applied to social security contributions, and applies where those allocations are considered as well as professional income as miscellaneous 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 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. **This advantage 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 (12)**. 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 realised or recorded upon the exercise of the right are not taxable.

The Act of 24 December 2002, allows for an extension up to maximum 3 years 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 2 November 1998 and 31 December 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.

The Economic Recovery Act of 27 March 2009 allows for a new extension of the period during which the right of option can be exercised without additional fiscal burden, for option plans concluded between 1 January 2003 and 31 Augustus 2008. The conditions are the same as those listed above, except that they must have been offered between 2 November 2002 and 31 Augustus 2008 included. The extension reaches 5 years for those option plans, up to a maximum fiscal value of 100,000 euro. "Fiscal value" means the value of the advantage in kind fixed as described above.

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

- the income support;
- the legal family allowances;
- 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.

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12 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.

Copyright is considered as professional income if resulting from a professional activity and for the bracket above 51,920 euro. Below this threshold, it is assimilated to income from movable property (13).

As mentioned above, the taxable amount is fixed after application of lump sum costs.

**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 managers** are also taxable in respect of their gross amount less the contributions payable in respect of social legislation. Premiums paid to recognised 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 levied on the salaries of employees (or their counterparts) whose net taxable household income exceeds 18,592.01 euro 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 levies on pensions of which the monthly amount exceeds 2,053.05 euro, 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 euro per kilometre;  
Where the travel expenses have been incurred by any other means, fixed professional expenses (0.15 euro per kilometre) are granted, the maximum distance between home and work being set at 100 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 euro per kilometre with the actual expenses in respect of the distance exceeding 100 kilometres.

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13 See above on page 19.

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;
- remunerations paid to the assisting spouse;
- depreciation of property used for a professional activity (14);
- 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 regulation also applies to companies and is detailed in chapter 3, page 107.

Are not deductible:

- personal expenses;
- fines and penalties;
- expenses exceeding the professional requirements to an unreasonable extent;
- expenses relating to clothing, with the exception of special professional clothing;
- 31% of restaurant expenses;
- 50% of entertainment allowances and business gifts;
- travel expenses other than those relating to commuting: 25% of professional car expenses (including losses on those vehicles) 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 managers with a view to the subscription to shares in a (resident) company from which they receive remunerations in the course of the taxable period.

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14 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 97.

**LUMP SUM EXPENSES**

For certain categories of earned income, the law provides **lump sum expenses** which substitute actual expenses, unless the latter are higher.

The basis for calculation of the lump sum expenses is the gross taxable amount, less social security contributions and contributions assimilated thereto (15).

For **company managers** the lump sum deduction is set at 5% of the basis of calculation, with a maximum of 3,590 euro.

This also applies to **remunerations paid to the assisting spouse**.

The same 3,590 euro limit applies to the lump sum expenses which may be awarded to **employees** and **members of a liberal profession** (16); these are calculated according to the scale below.

*Table 1.4  
Lump sum allowable professional expenses*

Basis of calculation in euro		Professional expenses	
		lower limit	above the limit
0	5,190	0	28.7%
5,190	10,310	1,489.53	10%
10,310	17,170	2,001.53	5%
17,170	and more	2,344.53	3%

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

*Table 1.5  
Additional allowable professional lump sum expenses*

Distance between home and work		Additional fixed amount
75 km	- 100 km	75
101 km	- 125 km	125
126 km	and more	175

15 That is to say the deductible part of contributions to recognised mutual insurance companies; see above, page 27.

16 This maximum is reached at a basis of calculation of 58,685.67 euro.

#### DEDUCTION OF EXPENSES

Where the taxable earned income includes income which is taxable separately (17), professional expenses are deducted as follows:

- in proportion to the aggregate taxable income and separately taxable income, in the case of lump sum 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:

- travel expenses other than those relating to commuting: 25% of professional car expenses (including losses on those vehicles) excluding fuel (fuel used for professional purposes is totally deductible);
- tax exemption for additional staff in small and medium sized companies;
- investment deductions.

Taxpayers declaring **proceeds** are only eligible for the investment deduction 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 1.4.8. (18).

#### E. Deduction of losses

##### LOSSES INCURRED IN THE CURRENT TAXABLE PERIOD

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 realises 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 TAXABLE PERIODS

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

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17 For example arrears, compensation for loss of employment and certain capital gains.

18 See page 61.

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 12,040 euro (after deduction of 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.

**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 9,280 euro.

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.

**QUALIFICATION OF THE ALLOCATED INCOME**

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 pension 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 tax advantage are detailed hereafter. The deductions are grouped in four categories:

- the deductions relating to real estate investments and to long-term savings,
- the deductions relating to the environment,
- the other expenses entitling to a tax relief at federal level,
- regional tax incentives.

For each of these expenses, it will be stipulated how they are granted, on what conditions and to what extent.

The tax advantage can take four forms:

- a deduction from the total net income;
- a tax credit computed at the “special average rate” (19);
- a tax credit at the marginal rate;
- a refundable tax credit deducted from the “principal”, i.e. from the tax levied on the aggregate taxable income and on the separately taxable income, after taking into account exemptions and all the other tax credits (see “General principles”, page 50).

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

Expenses relating to long-term savings and to investment in real property principally include:

- capital repayments of mortgage loans and interest payments,
- personal contributions paid in the context of group insurance schemes,
- individual life insurance premiums,
- payments made in the context of a pension savings scheme.

As far as mortgage loans are concerned, there have been several successive regimes; the matter can thus seem particularly complex. The following diagram shows the applicable regimes (20).

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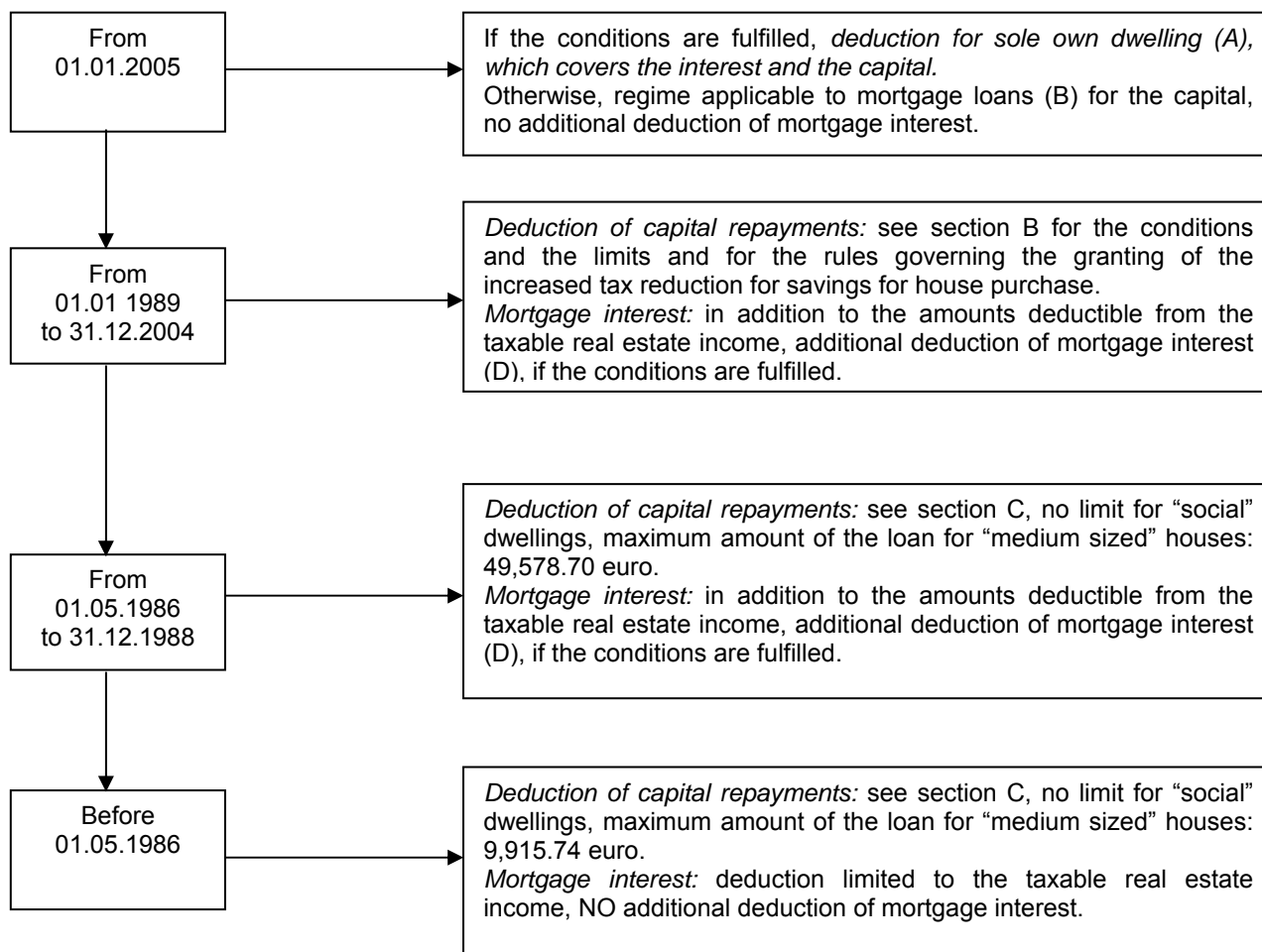
19 This “special average rate” is explained hereafter at page 54.

20 For transitory provisions and individual cases, among which refinancing loans, see circular Ci.RH.26/578.655 of 14.06.2006.



Date of the loan

Tax regime applicable to capital and interest repayments



Are taxed **at the termination date:**

- 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.

These capitals and surrender values are taxed in the form of a **notional annuity** where 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 marginal 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. It is included in the aggregated taxable income.

**Table 1.6**  
**Conversion rates for the calculation of notional annuities**

Age reached by the beneficiary at the time of the surrender	Conversion rates	Taxable period (*)
40 or less	1	13 years
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 more	5	10 years

(\*) The requirement to report income comes to an end if the policy holder deceases before the end of that period.

Contracts concluded in the context of **group insurances, pension schemes and life insurances** have a feature in common: they combine a tax advantage granted where premiums or contributions are paid, with a taxation upon withdrawal, i.e. where the capital or the annuity resulting from premiums capitalisation are paid out. Where life insurance is used for the reinstatement of a mortgage loan, withdrawals are taxed when the capital is fully rebuilt. Hereafter are described the advantages granted where premiums or contributions are paid, and is explained how withdrawals are taxed.

These types of long-term savings are also submitted to some taxation payable by insurance companies or pension funds. However, this matter will not be dealt with because the policyholder is not directly concerned.

#### A. Deduction for sole own dwelling

This deduction applies to loans raised on or after 1 January 2005 in order to acquire or maintain the taxpayer's dwelling house. It must be the taxpayer's sole dwelling house, which means that he cannot own other real estate by 31 December of the year in which the loan contract was entered into (21). The dwelling must be located in a Member State of the European Economic Area.

The deduction applies to interest on loans, capital repayments or life insurance premiums assigned to the amortisation of the mortgage loans and balance due insurance premiums. The mortgage loan and the life insurance must have been contracted with a company having its seat in the European Economic Area.

As regards life insurance premiums, the following conditions must be 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 person who acquires the full property or usufruct.

21 Dwellings of which the taxpayer is co-owner, bare owner or usufructuary by inheritance, are not taken into account.

Unlike loans raised before 1 January 2005, the deduction is not limited according to the total earned income. The maximum amount of the deduction, per tax payer and per taxable period, is made up of the basic deduction and of increases:

- for 2009 income, the basic deduction amounts to 2,080 euro. It remains acquired to the taxpayer whatever changes in his real estate holdings may be after 31 December of the year in which the loan contract was entered into.
- this amount is increased during the first ten years of the loan contract. This increase amounts to 690 euro for 2009 income.

The basic amount is also increased where at least three children are dependent on the taxpayer on 1 January of the year following the year in which the loan contract was entered into. This increase amounts to 70 euro for 2009 income.

These increases no longer apply as from the taxable period during which the taxpayer becomes owner, occupier, emphyteutic lessee, superficiary owner or usufructuary of a second dwelling. The increases are then definitively lost.

The deduction applies to the total net income.

The granting of the deduction for sole own dwelling leads to:

- exemption of the cadastral income of the own dwelling house (22),
- abolition of the tax credit for real estate withholding tax amounting to 12.5% of this cadastral income,
- abolition of the additional deduction of mortgage interest,
- abolition of any other deduction of interest and tax credit for the mortgage capital repayment or for life insurance premiums.

#### **B.** *Life insurance premiums*

The life insurance premiums in question concern other contracts than those taken into account for the deduction for sole own dwelling. Consequently, this applies to contracts entered into before 1 January 2005 and after this day but not taken into account for the deduction for sole own dwelling.

These premiums entitle to a tax credit, 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. When the life insurance contract is assigned to the amortisation or securing of a mortgage loan, the bonuses must be stipulated, in the event of death, in favour of the person who acquires the full property or usufruct of the dwelling, up to the amount which has been secured or amortised in favour of the creditor.

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22 From now on, the exemption can be applied to a dwelling located within the European Economic Area. In that case, the exemption is applied to the rental value or the total amount of the rent and the rental benefits.

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

- to 15% of the first bracket of 1,730 euro of earned income, and to 6% beyond;
- with a maximum of 2,080 euro.

This limit applies to the combined life insurance premiums and mortgage capital repayments (see below, C), minus the premiums and the repayments benefiting the deduction for sole own dwelling limited to the basic amount.

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

They can entitle to the **increased tax credit 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 amortisation or securing of a mortgage loan;
- that mortgage loan was contracted with a view to constructing, acquiring or renovating the taxpayer’s dwelling house (23);
- that house was the taxpayer’s sole dwelling house when the contract was signed.

Consequently, the increased tax credit for savings for house purchase only applies to **mortgage loans entered into before 1 January 2005. As far as mortgage loans entered into after this date are concerned, the deduction for sole own dwelling applies.**

The tax credit 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 1.7, 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 1 January of the year which follows the year in which the life insurance contract was signed.

**Table 1.7**  
**Basic amounts of the loan entitling to a tax credit for savings for house purchase**

Year in which the insurance contract was taken out	Basic amount of loan entitling to tax credit for house purchase
1989	49,578.70
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

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23 i.e. the house whose cadastral income is entitled to the lump sum deduction. See above, page 16.

### C. Mortgage capital repayments

Two types of contract should be distinguished: contracts concluded as from 1 January 1989 and which do not overturn existing contracts (24) and contracts concluded before 1989.

As regards **contracts entered into as from 01.01.1989**, not taken into account for the deduction for sole own dwelling, the mortgage capital repayments entitling to a tax credit for saving for house purchase are limited in accordance with the year of subscription; the amounts are those in Table 1.7.

If, however, the loan has been entered into with a view to constructing, acquiring or renovating a house situated in the European Economic Area 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 1 January 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 credit 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 borrowed 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 euro 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 euro.

In all cases, deductibility only applies where the house is located in the European Economic Area.

The loan must have been contracted with a company having its seat in the European Economic Area. No balance due insurance is required any more.

### D. Mortgage interests

The following rules only apply to **interest on loan not taken into account for the deduction for sole own dwelling**.

Interest 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**.

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

### 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. The additional deduction only applies to **loans contracted before 1 January 2005**. If the loan was contracted between 1 May 1986 and 31 October 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 1 November 1995, the first occupation must date back 15 years at least from the day the loan was secured;
- in the case of renovation, the work must amount to a minimum amount and must have been carried out by a registered contractor.

### 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 1.7. In respect of renovation work, this ceiling is halved and rounded to the next ten. 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 (respectively 1, 2, 3 or more than 3) as of **January 1<sup>st</sup> of the year following the year in which the loan was taken out**.

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

- from the first (25) 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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25 The first year is the one as from which the cadastral income is taxable.

E. Pension scheme

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 plan participant opens an **individual savings account** with a financial institution. He may either adopt a self-administered approach or authorise 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 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 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.

The tax credit cannot exceed 870 euro per taxpayer and per tax year.

The following conditions shall be fulfilled:

- The savings account or savings insurance shall have been subscribed by an inhabitant of the Kingdom or an inhabitant of a Member State of the European Economic Area, aged 18 or over, but less than 65, for a duration of ten years at least (26).
- 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 (27).
- In any particular taxable 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 several savings accounts or savings insurances, but the payments made in one particular taxable period are restricted to one of them.

Tax credits are computed at the "special average rate". Where a tax credit for pension schemes is granted, no tax credit is available for the purchase of employer's shares.

Granting a tax advantage where premiums are paid, leads to the taxation of the received amounts at the date of termination of the contract. Since 1993, the capital liquidated at the termination of the pension scheme has been liable to an "advanced taxation". This advanced taxation, or "taxation on long term savings" is a "miscellaneous tax" (indirect tax); it supersedes PIT. Inasmuch as the tax has been paid, the theoretical capital is not liable to PIT (28).

26 Since tax year 1993, the mandatory duration has been reduced to 5 years for individuals aged 55 or over on 31 December 1986, that is to say for persons born in 1932 or before.

27 From assessment year 2005 on, where savings-insurance contracts are used for the reinstatement or the securing of a mortgage loan, it shall be stipulated that, in the event of death, the advantages are to be paid out to the persons acquiring full ownership or the usufruct of the dwelling concerned, up to the amount which has been secured or amortised in favour of the creditor.

28 See part II, chapter 4, page 194.

F. Group insurance and pension funds

A group insurance is a contract between an employer or a group of employers and an insurance company with a view to providing 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.

Employer's contributions to a group insurance are deductible for the employer 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.

Personal employee's contributions are taken into account for a tax credit inasmuch as the following conditions are fulfilled:

- 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, a provident institution or an institution for occupational retirement provision established in a Member State of the European Economic Area, and the payment is a final one;
- they meet the "80% of last gross yearly salary" condition.

Personal employee's contributions entitle to a tax credit which is calculated at the "special average rate". Granting a tax advantage where premiums are paid, leads to the taxation of the received amounts at the date of termination of the contract (29).

G. Purchase of employers' shares

The purchase of shares entitles to a tax credit 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;
- supporting documents establishing the purchase of the shares by the taxpayer and his still holding them at the end of the taxable period must be enclosed with the return.

The deductible amount is set at 690 euro for each spouse fulfilling these conditions. This deduction cannot be cumulated (30) with the tax credit for pension savings schemes.

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29 See hereafter, page 60.

30 The incompatibility is evaluated for each spouse separately.



H. 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 shall not be less than 3,460 euro in respect of 2009 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 4 June 2003 and can be checked on the website of FPS Finance.

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

The tax credit amounts to 15% of the expenses actually borne but cannot exceed 690 euro for the 2009 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 inasmuch as PIT is concerned.

In the case of aggregated taxable income, the tax credit 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.

I. 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 34,610 euro.

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

J. Expenses for making dwellings secure against burglary and fire

Expenses taken into consideration are those borne for work being done to secure the real property owned or rented by the taxpayer. Are concerned:

- expenses relating to the delivery and the placing of intrusion retardant facade elements: special glass window units, security systems for the different building access points and reinforced doors;
- expenses relating to the delivery and the placing of alarm systems;
- expenses relating to the delivery and the placing of cameras fitted with a recording system.

The work must have been carried out by a registered contractor.

Expenses taken into consideration as professional expenses or entitling to the investment deduction are rejected.

The tax credit cannot be granted concurrently with one or several of the following tax advantages:

- the deduction granted to the owner of a classified building (cf. above I);
- the tax credit for expenses borne for work aimed at energy saving and for passive houses (cf. below 1.3.2., A and B);
- the tax credit for expenses for renovation in 'zones of positive metropolitan policy' (cf. above H);
- the tax credit for expenses for renovation of low-rent dwelling houses (cf. below K).

The tax credit amounts to 50% of the expenses borne during the taxable period, with a maximum of 690 euro. In the case of aggregated taxable income, the tax credit 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. The tax credit is granted proportionately to the spouses' earned income if they are tenants.

### K. Expenses for renovating low-rent dwelling houses

Are taken into consideration, expenses which have been actually paid during the taxable period in order to renovate a dwelling house of which the taxpayer is the owner-lessor. The building must have been rented out for nine years via a social accommodation agency.

The tax credit is granted provided the following conditions are met:

- the dwelling house must have been in use for at least 15 years,
- the total cost of the work, including VAT, must amount to at least 10,380 euro,
- the work must be carried out by a registered contractor.

The tax credit is granted during nine taxable periods and amounts to 5% of the expenses which have been actually paid during each taxable period, with a maximum basic amount of 750 euro, that is to say an indexed amount of 1,040 euro in respect of 2009 income.

The tax credit does not apply to:

- expenses taken into consideration as professional expenses;
- expenses entitling to the investment deduction;
- expenses entitling to a deduction for the maintenance and restoration of classified monuments (cf. p. 41);
- expenses entitling to a tax credit for work aimed at energy saving and for passive houses (cf. p. 43 and 44);
- expenses for renovation of dwelling houses in 'zones of positive metropolitan policy' (cf. p. 41).

In the case of aggregated taxable income, the tax credit is granted proportionately to the part of each of the spouses in the cadastral income of the dwelling house in question.

### 1.3.2. Environment

#### A. Expenses borne for work aimed at energy saving

This advantage is granted in the form of a tax credit and the rate amounts to 40%. Are taken into consideration expenses relating to:

- the maintenance of heating boilers;
- the replacement of old heating boilers;
- solar water heating;
- the installation of photovoltaic solar array and any other installations to produce energy of geothermal origin;
- the installation of double-glazed window units;
- roof, wall and ground insulation;
- the installation of thermostatic valves or of a room thermostat with clock;
- energy audit of the dwelling.

The deduction applies to each dwelling owned or rented by the taxpayer.

Expenses taken into consideration as professional expenses or entitling to the investment deduction are rejected.

The work must be executed by a registered contractor.

The tax credits are taken into consideration up to the amount of 2,770 euro per dwelling. This amount has been increased to 3,600 euro for expenses relating to the installation of photovoltaic solar array and water heating by solar energy.

Where the total amount of the tax credits exceeds those limits, the surplus can be carried over to the three taxable periods following the taxable period in which the expenses were borne, provided it does not exceed the annual limit. This carry-over only applies to expenses borne for work in a dwelling of which the first occupation dates back to at least 5 years before the start of the work.

The expenses are apportioned between the spouses depending on each spouse's taxable income in comparison to the sum of both taxable incomes.

The part of the tax credit relating to investments in roof, wall and ground insulation which cannot effectively be granted to the taxpayer because of insufficient taxable income, is *temporarily* converted into a refundable tax credit (31).

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31 However, the conversion into a refundable tax credit does not apply to the taxpayers whose earned income has been exempted by convention and is not taken into account for the calculation of the tax levied on their other incomes.

B. Passive houses

Passive houses are extremely well insulated so that energy consumption can be strongly lowered. The granting of the tax credit shall be subject to the production of a “passive house certificate” by the owner.

The taxpayer must invest in the construction, the acquisition of a new passive house or in the renovation of a real property in order to convert it into a passive house. The dwelling house must be situated in one of the Member States of the European Economic Area.

The tax credit amounts to 600 euro (basic amount to be indexed) per taxable period and per dwelling house and is granted for 10 successive taxable periods. The tax credit amounts to 830 euro for 2009 income.

In the case of aggregated taxable income, the tax credit is granted proportionately depending on each spouse’s taxable income in comparison to the sum of both taxable incomes.

C. Overall energy costs reduction fund

This tax credit was only granted during the year of the bonds subscription, i.e. in 2007.

The condition that the subscriber must keep the bonds in his possession for at least sixty months, still applies. If this condition is not met, the tax credit granted is revoked proportionately to the number of missing months and the taxpayer acquiring the so transferred bonds is not entitled to the tax credit.

D. “Green” loans

These loans also entitle to a tax credit. “Green” loans are loans contracted to finance the expenses giving right to the tax credit mentioned sub. A.

The tax credit amount to 40% of the interests actually paid after deduction of the State intervention as an interest rate subsidy.

**1.3.3. Other expenses entitling to federal tax incentives**

A. Expenses for child care

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

- the taxpayer or his/her spouse 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 12 years old (32).

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32 In case of joint parenthood, each of the joint parents can deduct the personally incurred expenses.

44 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
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- the child care expenses must have been paid, either to institutions or facilities recognised by local public authorities (Regions or Communities), to nursery schools or elementary schools located in the European Economic Area or to associations linked to them. The first case refers to child care facilities, i.e. notably institutions or host families recognised, subsidised or controlled by the “Office de la Naissance et de l’Enfance”, by “Kind en Gezin”, by the local authorities (Regions or Communities) or by foreign public institutions located in another Member State of the European Economic Area. The second case refers to schools but also to associations linked to them and their competent authority (municipal authority or school board). “Recognised institutions” no longer refers exclusively to day nurseries. It also refers to other facilities such as playgrounds organised by the communes, holiday camps organised by youth organisations or residential schools. Since 1 January 2008, the deductibility has been extended to child care expenses paid to institutions located in a country of the European Economic Area.
- the amount of these expenses must be established by supporting documents kept at the disposal of the tax office.

The deductible amount is the day's rate actually paid and is limited to 11.20 euro per day of care and per child.

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

#### B.     Maintenance allowances

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

- the beneficiary is not a member of the taxpayer's household;
- the maintenance allowance is payable in pursuance of the civil code, the judicial proceedings code or the Law on legal cohabitation;
- 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 recognised institutions (33) are **deductible from the total net income**, provided they amount to at least 30 euro per beneficiary institution. The total amount thus deductible cannot exceed 10% of the global net income of the spouse nor 346,100 euro per spouse. The deduction is made proportionately to the income of each spouse. Donations made in favour of Belgian universities and scientific institutions deducted from prizes and subsidies taxed as miscellaneous income, are no longer deductible and cease qualifying for the computation of the upper limit.

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33     Since 01.01.2008, the deductibility has been extended to institutions located in a country of the European Economic Area.

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 support income or have been receiving full unemployment benefits for 6 months at least;
- the remunerations must be subject to social security payments and must exceed 3,390 euro.

The deduction is limited to 50% of the salary, with a maximum of 6,920 euro.

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

E. LEA vouchers and “service vouchers”

The amounts paid out to local employment agencies (LEA) upon the acquisition and use of LEA vouchers are entitled to a **tax credit 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 vouchers.

The amounts spent for services paid with “service vouchers” entitle to a **tax credit at a 30% rate**. “Service vouchers” are acquired by natural persons wishing to appeal to community services (household work and some activities outside the user’s place of residence, such as accompanied transport for elderly persons or for persons with reduced mobility, or some daily shopping), but not within the framework of a professional activity. These vouchers are issued by companies recognised by the National Employment Service. The (private) person having acquired the vouchers then enters into a contract with one of those recognised companies and uses the vouchers to pay for the services performed.

These expenses entitle to a tax credit up to the nominal value of the LEA vouchers and “service vouchers” issued in the taxpayer’s name and purchased from the issuer in 2009; where appropriate that amount must be diminished by the nominal value of the LEA vouchers returned to the issuer in the course of the year; the allowed expenses may not exceed 2,510 euro.

As far as service vouchers are concerned, the tax credit exceeding the tax due after deduction for dependents, can be refunded (34). This only applies to taxpayers whose income does not exceed 23,900 euro.

*F. Subscription for bonds issued by the Sustainable Economy Fund*

This tax credit was only granted during the year of the bonds subscription, i.e. in 2003.

The condition that the subscriber must keep the bonds in his possession for at least sixty months, still applies. If this condition is not met, the tax credit granted is revoked proportionately to the number of missing months and the taxpayer acquiring the so transferred bonds is not entitled to the tax credit.

*G. Starters Fund*

This tax credit was first only granted for the subscribed bonds issued in 2004. As far as those subscriptions are concerned, the condition that the subscriber must keep the bonds in his possession for at least sixty months, still applies. If this condition is not met, the tax credit granted is revoked proportionately to the number of missing months and the taxpayer acquiring the so transferred bonds is not entitled to the tax credit.

New bonds were issued in 2009. The tax credit is granted for those new issues under the same conditions: 5% of the payments, with a maximum of 290 euro for 2009 income.

*H. Shares of development funds for microfinance*

This tax credit was created in 2008. It is granted for subscriptions for registered shares issued by recognised development funds which are active in the field of microcredit.

The sums paid must amount to minimum 350 euro. The subscriber must keep the shares in his possession for at least sixty months uninterrupted, except in the case of death. If this condition is not met, the tax credit granted is revoked proportionately to the number of missing months and the taxpayer acquiring the so transferred bonds is not entitled to the tax credit.

*I. Internet for everyone II*

The tax credit "Internet for everyone" has been reintroduced for a part of 2009. It is granted for "Start2surf@home" packages acquired between 1 May 2009 and 31 December 2010. There are four basic packages. The granted tax advantage corresponds to the VAT paid, with a maximum of 102.69 euro for a package including a desktop and 104.79 euro for a package including a laptop. The advantage is granted as a refundable tax credit.

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34 For the calculation of this refundable tax credit, see hereafter on page 62. However, the conversion into a refundable tax credit does not apply to the taxpayers whose earned income has been exempted by convention and is not taken into account for the calculation of the tax levied on their other incomes.

#### **1.3.4. Regional tax incentives**

##### **A. Win-win loan**

This tax advantage has been established by the Flemish government and came into effect on September 1<sup>st</sup>, 2006. It applies to loans granted by natural persons to start-up companies.

The **borrower** shall be a micro, small or medium-sized enterprise as defined in the European Recommendation (35). Are concerned enterprises which:

- employ fewer than 250 persons;
- do not exceed one of the following limits: an annual turnover of 50 million euro or an annual balance sheet total of 43 million euro;
- meet the independence criterion.

The borrower's principal place of business shall be located in the Flemish Region and shall have been registered with the Crossroads Bank for Enterprises for maximum three years.

The borrowed funds shall be used for performing the professional activity of the enterprise.

The **creditor** shall be a natural person whose domicile is located in the Flemish Region. The domicile condition applies to each taxable period for which the creditor can benefit a tax advantage. The compliance with this condition is assessed on 1 January of each taxable period.

The win-win loan shall be granted outside the creditor's professional and commercial activities. He cannot be the borrower's employee, manager, director, shareholder, spouse or legal cohabitant. The compliance with this condition is assessed at the time when the loan is granted. The creditor cannot be a borrower in the context of another win-win loan.

The **loan** shall be subordinated as well to the borrower's existing debts as to his future debts and shall be running for 8 years. The amount of the loan granted by the creditor to one of several borrowers cannot exceed 50,000 euro. The principal shall be repaid in one instalment and the interest rate shall be between 50 and 100% of the legal interest rate (5.5% for 2009).

The advantage is granted in the form of a tax credit. It includes an annual credit based on the amounts of the loans and possibly a single tax credit if the loan is not repaid by the borrower. The annual tax credit amounts to 2.5% of the arithmetic mean of the amounts which have been lent over the period and is thus limited to 1,250 euro per spouse. The single tax credit is granted when the loan cannot be repaid by the borrower because of a bankruptcy or a liquidation. It amounts to 30% of the principal which is definitively lost, and cannot exceed 50,000 euro.

##### **B. Caisse d'investissement de Wallonie (Walloon Investment Fund)**

This provision came into force on 4 May 2009. Each person liable to PIT, domiciled in a municipality of the Walloon Region and having subscribed for public issues of shares or bonds of the "Caisse d'investissement de Wallonie" has right to a tax credit.

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35 Commission Recommendation 2003/361/EC of 6 May 2003 and its possible modifications.

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- The entitling subscriptions are limited to 2,500 euro per year and per taxpayer;
- The rate amounts to 8.75% for four successive taxable periods as regards public issues of shares;
- It amounts to 3.10% for four successive taxable periods as regards public issues of bonds.

The tax credit is granted as from the taxable period in which the shares/bonds have been subscribed. It is no longer granted where the shares/bonds are transferred, but the previous credits remain acquired. In case of death, the credit is transferred to the beneficiaries of the shares/bonds insofar as they meet the conditions, and it can be granted concurrently with credits to which these beneficiaries are entitled because of personal subscriptions.

### C. Tax credit for renovation agreements

Since 1 September 2009, a tax credit is granted in the Flemish Region to a creditor/natural person who concludes a renovation convention with a borrower/natural person.

The **creditor** must be a natural person. During the renovation convention, the creditor cannot be himself the borrower in the framework of another renovation convention.

The **borrower** must also be a natural person. During the renovation convention, he cannot be himself the creditor or the borrower in the framework of another renovation convention.

At the time the renovation convention is being concluded, the **real estate** cannot be registered for more than four years:

- in the register of unoccupied buildings;
- in the inventory of derelict and/or neglected industrial sites;
- in the list of unsuitable and/or uninhabitable dwellings and the list of derelict buildings and/or dwellings.

After the renovation work, the real estate must be used as principal residence by at least one of the borrowers for at least eight successive years.

The duration of the convention cannot exceed 30 years and the claimed interests cannot be higher than a determined ceiling.

The **tax credit** amounts to 2.5% of the amount put at disposal by the creditor in the framework of the renovation convention.

The calculation basis is limited to 25,000 euro per taxpayer.

For this calculation basis, the average of the amounts put at disposal on 1 January and 31 December of the taxable period, is taken into account. However, for tax year 2010, only the amount lent on 31 December 2009 is taken into consideration.

The tax credit is granted for the first time for the taxable period in which at least one of the borrowers uses the real estate as his principal residence and as long as this condition is met.

## 1.4. Computation of the tax

### 1.4.0. General principles

	tax according to scale (1.4.1.)
-	allowance for dependents (1.4.2.)
-	tax credits for expenses entitling to a tax incentive (1.4.3)
-	tax credit for replacement income (1.4.4.)
-	tax credit for overtime pay (1.4.5.)
=	reduced "base tax"
-	tax credit for foreign income (1.4.6.)
=	<b>"principal" on ATI</b> (aggregated taxable income)
+	tax on separately taxed income (1.4.7.)
=	<b>"principal"</b>
-	withholding taxes, tax credits, advance payments and other items to be set off (1.4.8.)
+	increases for no or insufficient advance payments (1.4.9.)
-	bonus for advance payments (1.4.9.)
=	<b>"State" tax</b>
+/-	regional and municipal surtaxes (1.4.10.)
+	tax increases (1.4.11.)
=	<b>amount payable by or to the taxpayer (*)</b>

(\*) *The amount eventually paid by or refunded to the taxpayer such as stated on the calculation note and on the notice of assessment in respect of personal income tax, includes 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 costs.*

Since 2004 the tax has been fully computed per spouse.

### 1.4.1. Tax rates

The rates applicable to 2009 income are as follows:

**Table 1.8**  
**Progressive rate**

Bracket of taxable income		Marginal rate
0	- 7,900	25 %
7,900	- 11,240	30 %
11,240	- 18,730	40 %
18,730	- 34,330	45 %
34,330	and more	50 %

### 1.4.2. Zero-rate band and deduction for dependents

A global zero-rate band, varying according to the composition of the household, is tax exempted. This global band consists in the first place of the basic zero-rate band granted to each of the spouses. This band is then increased by the exempted income for dependents and for certain specific family situations.

Where the global zero-rate band of one of the spouses exceeds the income it is credited against, the balance can be transferred onto the other spouse's income in order to be credited against his/her income.

These exemptions are calculated "from the bottom up".

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

The basic zero-rate band is 6,430 euro, both for a single person and for a spouse. An additional amount of 260 euro is granted where the taxable income does not exceed 23,900 euro. When the taxable income amounts to between 23,900 euro and 24,160 euro, a phasing out rule applies: the additional amount granted is progressively reduced proportionately to the difference between the taxable income and the 23,900 euro limit.

The basic exemption is increased by 1,370 euro where the taxpayer is disabled. This is also true where the taxpayer's spouse is disabled.

#### B. Exemptions for dependent children or other dependent persons

Children, ascendants and collaterals up to the second degree included, and persons the taxpayer depended on exclusively or principally during his childhood, can be considered as dependent.

A person is considered "dependent" if two conditions are met:

- on 1 January of the tax year (i.e. on 1 January 2010) he is a member of the family (36),
- he has not had personal means of subsistence exceeding a net amount of 2,830 euro (37),

Moreover, a child cannot be considered as dependent if he has been in receipt of any remuneration which was a business expense for the parents.

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

The following, however, are not taken into consideration:

- family allowances, maternity allowances, adoption premiums, scholarships and premiums for pre-marital saving;
- allowances chargeable to the Treasury when paid to disabled persons;
- remunerations received by disabled persons following their employment at a recognised sheltered workshop;
- maintenance allowances, including arrears of maintenance;
- pensions, up to 22,770 euro.

36 A child deceased during the taxable period is deemed to be a member of the taxpayer's family on 1 January of the tax year, provided it was already depending on him for the previous taxable period or was born and deceased during the taxable period. A missing child during the taxable period is still deemed to be a dependent child.

37 That amount is raised to 4,080 euro for an isolated person's dependent children, and to 5,180 euro for an isolated person's disabled dependent children.

## PERSONAL INCOME TAX (PIT)

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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 390 euro 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 1.9  
Exemptions for dependent children*

Rank of the child	Total exemption	Exemption for that child
1	1,370	1,370
2	3,520	2,150
3	7,880	4,360
4	12,750	4,870

For any child after the fourth, the exemption amounts to 4,870 euro per child.

An additional exemption of 510 euro 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 (the child will be awarded the deduction according to his/her own rank plus the deduction granted to the child next in rank).

A child legally considered as stillborn is also considered as dependent for the year in which the death occurred. The additional exemption for each dependent child who is less than three years old, is automatically awarded for a stillborn child.

### *Example*

*A couple with three dependent children has a taxable net income of 38,000 euro which, after all deductions, breaks down as follows:*

-	<i>taxpayer</i>	:	<i>20,000 euro</i>
-	<i>spouse</i>	:	<i>18,000 euro</i>

*The taxpayer is awarded an exemption of 14,570 euro which is calculated as follows:*

-	<i>exemption for the spouse</i>	:	<i>6,690 euro</i>
-	<i>three dependent children</i>	:	<i>7,880 euro</i>

*This exempted bracket includes the first two brackets of the progressive rate (Table 1.8).*

*The remaining income is taxed at 40% up to 18,730 euro, i.e. 4,160 euro, and at 45% above this limit.*

*The spouse is entitled to an exemption of 6,690 euro. So 1,210 euro will be taxed at 25% and the remainder will be taxed at the succeeding tax bracket(s).*

In case of **joint custody**, exemptions for dependent children can be apportioned between the parents. For that purpose, an “equal sharing of housing” under the Act of 18 July 2006 is necessary. The decision on joint custody must be written into an agreement registered or approved by a judge, or result from a judicial decision. Formalities have been simplified since 2008: the joint parents have no longer to apply yearly; they just have to mention it in the tax return and to keep at the disposal of the administration a copy of the decision on joint custody.

Exemptions for dependent children are then apportioned between the joint parents. The exemption granted for the child(ren) in question is determined without taking into consideration the other children of the household and is divided in two, one half being added to the other deductions to which the taxpayer is entitled, if there are any. The joint parent who deducts no expenses for child care has right to the additional exemption for children under three.

When exemptions for dependent children cannot be offset because of a too low income, they give rise to a **refundable tax credit**. The double exemption for disabled children and the additional exemption for children under three are to be taken into account. The refundable tax credit is computed at the marginal rate and limited to 390 euro per dependent child.

### C. Specific family situations

The other exemptions are as follows:

- ascendants and collaterals up to the second degree included, aged more than 65	2,730 euro
- other dependent persons	1,370 euro
- disabled dependent persons (38)	1,370 euro
- single person with dependent children	1,370 euro
- spouse whose income does not exceed 2,830 euro: the year of marriage or the year of declaration of legal cohabitation, provided the assessment is made per taxpayer	1,370 euro

In case of joint custody, each single parent has right to the total exemption for single persons with dependent children.

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

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

Table 1.10 lists these expenses, the rate and – if necessary - the maximum amount of the tax credit.

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38 With the exception of children.

**Table 1.10**  
**Expenses entitling to a tax credit**

Expenses entitling to a tax incentive	Rate and ceiling of tax credit
Long-term savings and investment in real property	
“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”
Pension savings scheme	
Personal premiums for group insurance contracts and pension funds	
Sums paid for the acquisition of employers’ shares	
Expenses for renovation in ‘zones of positive metropolitan policy’	15% of the expenses Maximum 690 euro
Expenses for making dwellings secure against burglary and fire	50% of the expenses Maximum 690 euro
Expenses for renovating low-rent dwelling houses	5% of the expenses for 9 years Maximum 1,040 euro
Environment	
Qualifying energy saving expenses	40% Maximum 2,770 euro or 3,600 euro as appropriate
Passive houses	830 euro
“Green” loans	40% of the interests, after deduction of the interest rate subsidy
Other expenses (tax credits granted at federal level)	
LEA vouchers	“Special average rate”
Service vouchers	30%
Bonds of the Starters Fund	5% of the expenses Maximum 290 euro

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 zero-rate band 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 credits on replacement income

Pensions, prepensions, 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 credit.

This tax credit is calculated and granted per spouse. 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 tax credit 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 tax credit is granted so as to reduce the tax to nil (E).

#### A. Basic amounts

For income 2009, the basic amounts of the credits are:

**Table 1.11**  
**Basic amounts of tax credits for replacement income**

Categories of income	Amount
Pensions	1,861.42
Prepensions	1,861.42
Standard unemployment benefits	1,861.42
Unemployment benefits for elderly (*)	1,861.42
Sickness/invalidity	2,389.45
Other replacement incomes	1,861.42

(\*) These are benefits granted to unemployed persons having reached the age of 58 as of 1 January of the tax year (in this case: 01.01.2010) and enjoying a seniority supplement.

#### B. "Horizontal" limitation

##### PRINCIPLES

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

The limitation is computed per spouse using the following ratio:

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

**EXCEPTIONS**

A particular provision applies as from 1 January 2007 as regards the combination of employed activities and pensions. The horizontal limitation does not apply:

- in case of combination of an employed activity and a survivors' pension;
- to the taxpayers having reached the legal pension age, in case of combination of an employed activity and a pension which does not exceed 13,881.55 euro.

Another particular provision relates to the re-entry in the labour market of people having taken early retirement. The horizontal limitation does not apply to the wage from the new employer or to earned income from a new self-employed activity where early retired workers' replacement income is one of the following payments:

- the additional prepension payment referred to in the collective bargaining agreement nr.17 of 19 December 1974 or additional payments referred to in collective bargaining agreements which provide for equivalent benefits;
- the additional payment granted in addition to a prepension, for workers having reached 50;
- the additional prepension payments provided the old employer's obligation to keep on paying it after the resumption of work, is not mentioned in a collective bargaining agreement or in an individual agreement providing for the additional payment.

**C. "Vertical" limitation**

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

**GENERAL RULE**

The general rule applies to all categories of income mentioned in Table 1.10 except the standard unemployment benefits.

The tax credit which subsists after the horizontal limitation is maintained in its entirety up to an aggregate taxable income of 20,630 euro; it then diminishes gradually and is reduced to one third of its amount as from an ATI of 41,260 euro.

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

**Table 1.12**  
***Vertical limitation of the tax credits: general rule***

<i>Brackets of ATI</i>	<i>Limitation of the tax credit</i>
Less than 20,630 euro	R'= R
From 20,630 euro to 41,260 euro	R': $[R \cdot 1/3] + [R \cdot 2/3 \cdot (41,260 - ATI) / 20,630]$
More than 41,260 euro	R'= R * 1/3



**PARTICULAR RULE APPLYING TO STANDARD UNEMPLOYMENT BENEFITS**

The tax credit subsisting after application of the horizontal limitation is maintained in its entirety up to an ATI of 20,630 euro; it then diminishes gradually and is no longer granted when the ATI of the household amounts to 25,750 euro.

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

**Table 1.13**  
**Vertical limitation of the tax credits: standard unemployment benefits**

<i>Brackets of ATI</i>	<i>Limitation of the tax credit</i>
Less than 20,630 euro	R'= R
From 20,630 euro to 25,750 euro	R': $R \cdot (25,750 - \text{ATI}) / 5,120$
More than 25,750 euro	R'= 0

**D. Limitation to proportional tax**

The credit 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 credit exceeds the taxpayer's tax liability.

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

After the awarding of tax credits 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 unemployment benefits 15,391.28 euro
- in respect of pensions, prepensions and other forms of replacement income 13,881.55 euro
- in respect of sickness and invalidity insurance benefits 15,423.94 euro

A phasing out rule applies where the income exceeds the upper limit. The final tax liability may not exceed the difference between the taxable income and the upper limit.

**1.4.5. Tax credits for overtime pay**

A tax credit is granted to persons employed in the market and non-market sectors who have worked overtime.

The credit is computed on the amounts on which the bonus for hours overworked was calculated, i.e. the gross salary before deduction of personal social security contributions, plus possible other remunerations.

The credit is only granted for a bracket of 100 hours. If the number of hours overworked (NHO) exceeds 100, the basis is limited to 100/NHO.

From now on, the rate of tax credit amounts to:

- 57.75% per hour achieved, to which a legal supplementary payment of 50 or 100% is applied;
- 66.81% per hour achieved, to which a legal supplementary payment of 20% is applied.

The tax credit cannot exceed the tax which applies to net taxable salary and wages.

#### **1.4.6. Tax credits 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 in the country of residence**. 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 credit.

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 credits are determined per spouse.

#### **1.4.7. 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, regional employment premiums.

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 20.

##### **MISCELLANEOUS INCOME**

The taxable amount of miscellaneous incomes has been detailed above (39). The tax rates applying to these incomes are the following:

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39 See page 20.

**Table 1.14**  
**Rates of separately taxed miscellaneous income**

Type of income	Tax rates
Occasional profits and proceeds	33%
Allowances "research workers"	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 realised less than 5 years after the acquisition, 16.5% in the other cases

#### EARNED INCOME

In many cases earned income which can enjoy the separate taxation is taxed at an average rate, calculated by dividing the reduced "base tax" by the aggregate taxable income. As stated in the chart at the beginning of section 1.4, the reduced "base tax" is the tax subsisting after application of the tax credits for replacement income and overtime pay.

**Table 1.15**  
**Separate taxation of earned income**

Type of income	Tax rate
Salary arrears, replacement income arrears	the previous year's average rate
Gross dismissal compensation > 850 euro	the previous year's average rate
Redeployment allowances	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%
Gross regional employment premiums (*) < 170 euro per month	10.38%
Young sportsmen's remunerations, first 17,030 euro gross bracket	16.5%
Volunteer sporting activity as a self-employed secondary activity, first 17,030 euro gross bracket	33%

(\*) Premiums paid or granted as from 1 July 2005.

**CAPITALS AND ANNUITIES FROM A GROUP INSURANCE CONTRACT**

In case a **capital is paid out**, a separate assessment is made for the paid-out capital where a group insurance is liquidated. There are different taxation methods depending on whether the capital is liquidated at the “usual date” or earlier.

“Usual date” (40) means:

- the retirement of the beneficiary (41);
- from the age of 60;
- the death of the insured;

**Table 1.16**  
**Taxation upon the liquidation of the capital of a group insurance**

Liquidation of capital or surrender value upon usual termination or assimilated date			
	Contributions made until 31.12.1992	Contributions made from 01.01.1993	
employer’s contributions	separate assessment, 16.5% rate	separate assessment	16.5% rate 10% rate (*)
employee’s contributions	separate assessment, 16.5% rate	separate assessment, 10% rate	
Liquidation of capital or surrender value before legal date			
employer’s contributions	assessment at marginal rate	assessment at marginal rate	
employee’s contributions	assessment at marginal rate	assessment at 33% rate	

(\*) *As far as the capitals liquidated as from 01.01.2006 are concerned, the entire capital is taxed at a 10% rate where the liquidation takes place at the earliest at the legal retirement age, in favour of the beneficiary who actually kept on working at least until this age. In order to verify fulfilment of that condition, a reference period of three years before the legal retirement age has been defined. In case of liquidation resulting from the death after the retirement age, the 10% rate remains acquired where the deceased actually kept on working until this age.*

Anyway, 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. Calculation of the principal**

The “principal” is calculated by adding:

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

It serves as a basis for the computation of the surcharges.

40 The concept “usual date” in the context of the liquidation of the capital of a group insurance, has been modified by the law of 28 April 2003 relating to supplementary pensions.

41 The concept “retirement” includes early retirement pensions but not prepensions (i.e. early retirement scheme embedded in the unemployment scheme).

60 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
July 2010 issue.

#### 1.4.8. 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 when this tax credit applied thereto, 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 reached at the end of any of the three assessment years preceding the current taxable period.

The tax credit is limited to 3,750 euro 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. Refundable tax credit on low income from professional activities

The refundable 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 or a separately taxed income, after deduction of the actual or lump sum professional expenses. Income from an occasional independent activity is not taken into account either.

Wage income is not taken into account except for statutory civil servants. In fact, waged income not taken into account for the refundable tax credit is entitled to a reduction of personal social security contributions.

Remunerations paid to the assisting spouse constitute a source of earned income from independent activity and are consequently included in the refundable tax credit basis.

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 lump sum taxation, are not entitled to the refundable tax credit.

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

The refundable tax credit is 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, as follows:

**Table 1.17**  
**Scale of refundable tax credit**

Brackets of income (I)		Amount of refundable tax credit (euro)
L <sub>1</sub>	L <sub>2</sub>	
0	4,510	0
4,510	6,020	$610 \times (I - L_1) / (L_2 - L_1)$
6,020	15,060	610
15,060	19,580	$610 \times (L_2 - I) / (L_2 - L_1)$
19,580	and more	0

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

**C. Refundable tax credit for service vouchers**

The portion of the tax credit for service vouchers which could not be offset, is refundable.

The amount which could not be offset is the amount exceeding the tax due after deduction for dependents. However, when the taxable income consists only of replacement income not exceeding the upper limits mentioned in Section 1.4.4, paragraph E, page 57, the refundable tax credit is equal to the tax credit for service vouchers. Consequently, the tax credit can also be granted to the taxpayer whose sole income is social minima, even though he is not taxable.

Where the phasing out rule mentioned in Section 1.4.4 applies, the refundable tax credit is equal to the tax credit for service vouchers after deduction of the tax remaining after application of the phasing out rule.

**D. Refundable tax credit "Internet for everyone II"**

The procedure for granting this refundable tax credit has been described above on page 47.

**E. Refundable tax credit for insulation work**

The temporary introduction of a refundable tax credit for the part of the tax credit relating to investments in roof, wall and ground insulation, has been mentioned above on page 43.

**F. Offsetting**

Are successively set off against the "principal" (42):

- 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,
- 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".

42 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.

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 offset:

- 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 tax credit for service vouchers;
- the tax credit "Internet for everyone II";
- the tax credit for insulation work.

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

#### **1.4.9. 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. The assisting spouse quota and remunerations paid to the assisting spouse are 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 2009 income, this rate is 3%.**

Advance payments must have been made:

- for the first quarter (AP1), no later than 14 April 2009;
- for the second quarter (AP2) no later than 10 July 2009;
- for the third quarter (AP3), no later than 12 October 2009;
- for the fourth quarter (AP4), no later than 21 December 2009.

Natural persons having begun their first self-employed principal activity are exempted 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 insofar 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 in respect of advance payments***

Increase	Bonus
	<u>Base</u>
- the tax calculated in respect of income from a self-employed activity considered separately or the tax which relates proportionally to this income, if it is lower;	the principal, increased to 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 set off against 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 rate, 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 euro or 1% of its base	
- contingent exemptions for beginning self-employed	



### 1.4.10. Regional and municipal surtaxes

#### A. Tax credit in the Flemish Region

A tax credit is granted to taxpayers being fiscally domiciled in a Flemish municipality.

The tax credit is granted per spouse and insofar as the activity income exceeds 5,500 euro.

It amounts to 250 euro and is increased to 300 euro where the activity income is between 5,500 euro and 22,000 euro.

Those limits are calculated per spouse and before application of the marital quotient. "Activity income" means the net amount, i.e. the income minus the actual or lump sum expenses, of the aggregated taxable wages and income from an independent activity.

**Table 1.19**  
**Tax credit in the Flemish Region**

Net income from professional activity (I)		Tax credit (euro)
0	5,499	0
5,500	22,000	300
22,000	and more	250

#### B. Municipal surcharges

Municipal surcharges are calculated at the appropriate rate which is specific to each municipality and which is based on the "principal".

### 1.4.11. Tax increases

#### PRINCIPLES

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

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

## PERSONAL INCOME TAX (PIT)

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### A. Rates of increase

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

**Table 1.20**  
**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: 1 <sup>st</sup> infringement (not counting failure to declare as sub A) 2 <sup>nd</sup> infringement 3 <sup>rd</sup> infringement 4 <sup>th</sup> 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: 1 <sup>st</sup> infringement 2 <sup>nd</sup> infringement 3 <sup>rd</sup> 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 INCOME TAX (CIT)

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### *What is new?*

- *From now on, banks, insurance companies and stock exchange companies must also hold the minimum share required in the framework of the participation exemption (PE) system.*
- *Carry-over of the PE surpluses to the next taxable periods as a consequence of the “Cobelfret” judgment.*
- *As regards the investment reserve, the definition of SMEs as companies which can benefit from the reduced rates, has been replaced by the concept of “small companies” as defined in the Corporation Code.*

### 2.1. Taxable period

In respect of the taxation of individuals, the taxable period is always the calendar year. This is not the case for corporate income tax: the taxable 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 taxable period 2010 therefore applies **to profits from financial years closed between 31 December 2009 and 30 December 2010**.

In the context of the present Memento, the described legislation applies to financial years closed on 31 December 2009. As a result, changes applicable as from 1 January 2010 or later are not mentioned here.

### 2.2. Liability to corporate income tax

All companies, associations, establishments or institutions 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 organisations 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 phasing out regime on coordination centres and the regime on SICAVs (Open-ended investment companies). They are described in annex 2 to this chapter (43).

#### 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 exempted (see below: tax exempted 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, take place in the following order:

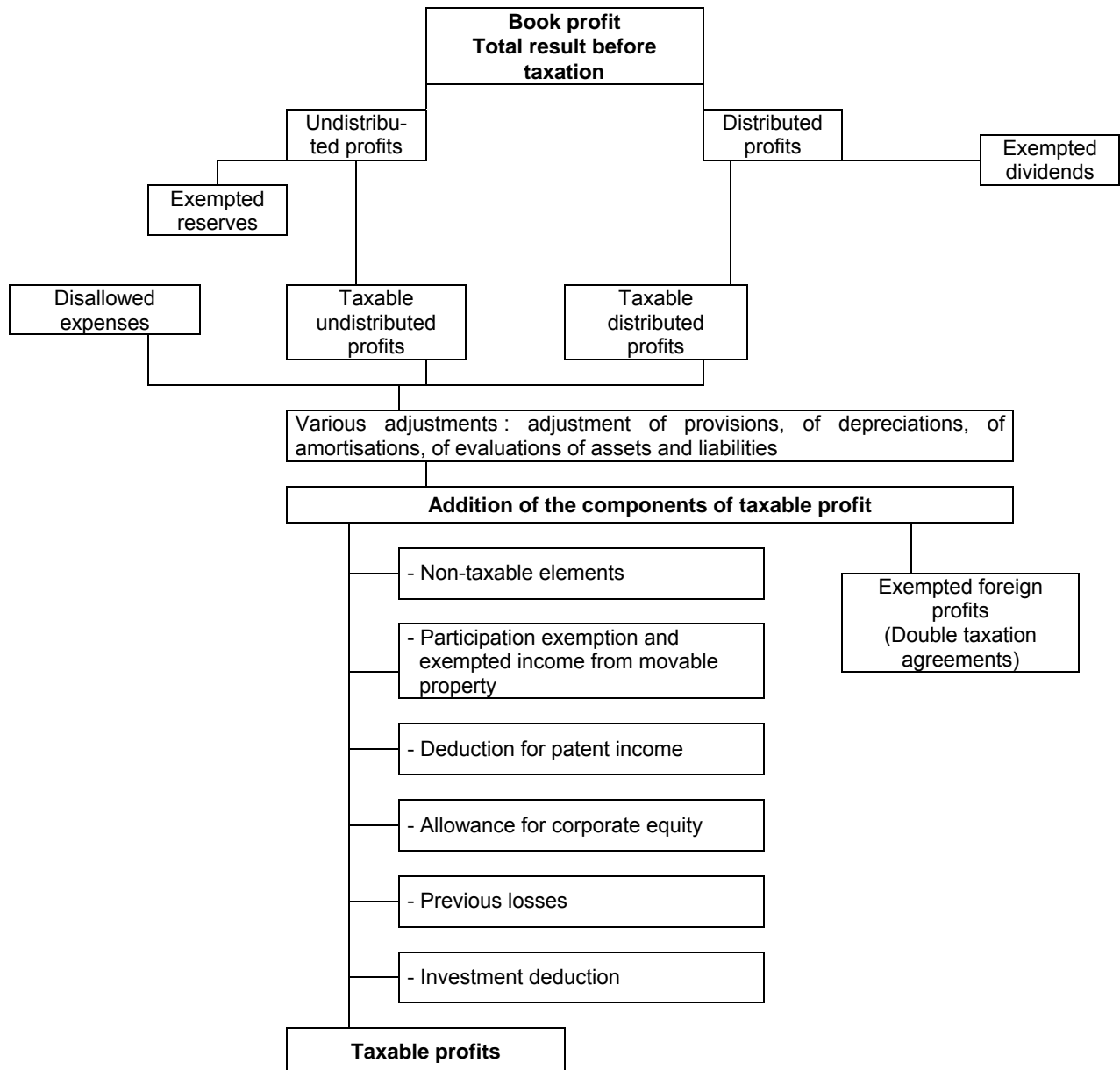
- addition of the three elements making up the taxable profit: reserves, disallowed expenses and distributed profits (see 2.3.1.);
- breakdown of profits according to their origin (Belgian or foreign) (see 2.3.2.);
- deduction of non-taxable items (see 2.3.3.);
- deduction for "Participation Exemption" (PE) and for exempted movable income (see 2.3.4.);
- deduction for patent income (see 2.3.5.);
- allowance for corporate equity (see 2.3.6.);
- deduction of previous losses (see 2.3.7.);
- investment deduction (see 2.3.8.).

The net taxable profit thus calculated is taxed globally.

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43 See page 91 and following.

*Diagram of CIT  
Assessment of tax base*



### 2.3.1. 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); exempted 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*.

### **EXEMPTED RESERVES**

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

The *exempted portion of capital gains* (44) is considered an exempted 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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44 See pages 105 and following.

**Profits exempted 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.

This exemption system is based on one or several framework agreement(s) entered into with a view to the financing of audiovisual productions. This/those agreement(s) is/are concluded between the company producing the audiovisual work and the company or companies financing it.

Are considered as “audiovisual work”:

- fiction, documentary or animation feature films intended for distribution;
- TV fiction feature films (45);
- animation TV-series;
- documentary TV films;
- TV-series intended for children and youth, i.e. educational, cultural and informative fiction series intended for a target group of children and youth between 0 and 16 years.

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 euro (46),
- the tax-exempted 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 exempted investment reserve. This possibility is open to SMEs as defined in the Corporation Code.

The exempted 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.

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45 Fiction films broadcast in 52 minutes or less can qualify as recognised audiovisual works for purposes of the tax shelter legislation, on condition that the fiction film as a whole is longer than 52 minutes.

46 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 taxable periods.

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

- the exempted 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 euro and can be exempted up to 50%.

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 deduction (47). This three-year period starts the first day of the taxable 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 taxable period during which the three-year investment period expires.

SMEs benefiting the investment reserve have to choose between this reserve and the allowance for corporate equity (see page 83).

### ***Exempted regional aid***

By way of derogation from the general regime which includes regional aid in the tax base (48), the Act of 23 December 2005 exempts some aid measures granted by the Regions to companies. Are concerned:

- back-to-work bonuses and progression-to-work bonuses granted to companies by the competent regional institutions.  
These bonuses are State aids for employment which are authorised by the European Commission.
- capital subsidies and interest subsidies.  
These subsidies are granted by the Regions in the context of their laws of economic expansion for the acquisition or constitution of tangible or intangible fixed assets. Are also concerned, subsidies granted by the competent regional institutions in the context of R&D aid.  
Where a subsidised asset is transferred within the first three years of the investment, the amount of formerly exempted profits is considered as a profit obtained in the taxable period during which the asset is transferred (except in case of disaster, expropriation, etc.).

The exemption applies to premiums and subsidies notified as from 1 January 2006 (49) inasmuch as the date of notification relates, at the earliest, to the taxable period linked to tax year 2007.

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47 See below, page 83.

48 See chapter 3, page 103.

49 As far as R&D subsidies are concerned, the exemption applies to premiums and subsidies notified as from 1 January 2007.



***Withdrawals on exempted reserves***

In principle, each withdrawal on exempted reserves leads to an increase of the tax base. This withdrawal is taxed at the normal CIT rate except in case of subsequent deduction. In order to stimulate the use of some exempted reserves, a special tax regime has been introduced for tax years 2008, 2009 and 2010. The withdrawals are taxable at a reduced rate.

The exempted reserves concerned are the following:

- the investment reserve constituted during tax year 1982;
- the exempted realised capital gains, except for capital gains realised on company vehicles, vessels and capital gains to which spread taxation applies.

The withdrawal cannot exceed the total amount of capital gains existing at the end of the taxable period linked to tax year 2004.

The tax rate amounts to 14% or 25% according to whether there are investments or not (50).

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

The general principle of deductibility of expenses is the same as with PIT (51).

Expenses paid for enterprise crèches are deductible within the limits and conditions set out in chapter 3 (52).

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 include 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 exempted 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 (53),
- certain pensions and pension contributions,
- amounts attributed within the framework of employee equity participation and employee participation in profits and enterprise results (54).

Some of these elements are explained hereafter.

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50 See below, page 86. Rates applicable to tax year 2010.

51 See above, page 27.

52 See below, page 107.

53 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.

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

**Depreciation rules** are described at chapter 3 (55). Among the differences between accounting depreciation and tax depreciation are: the obligation to depreciate the assets pro rata temporis in the accounting year of their acquisition and the obligation 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.

### **SMEs such as defined in the Corporation Code**

The new definition of SMEs, which replaces the definition of SMEs according to the criterium of the reduced rates, requires the fulfilment of the criteria set out in article 15 of the Corporation Code relating to “small companies”.

According to the Corporation Code, small companies are companies possessing legal personality and having not exceeded more than one of the following criteria in both the last and the last but one approved financial years:

- annual work force average: 50
- annual turnover (excluding VAT): 7,300,000 euro
- balance-sheet total: 3,650,000 euro

A company whose annual work force average exceeds 100, falls beyond the scope of the definition.

All criteria are fully described in article 15, § 1-6, of the Corporation Code.

### **DEDUCTIBILITY OF TAXES**

Corporate income tax and the related additional crisis tax, advance payments and allowable withholding taxes (56) 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 (notably registration duties, inheritance tax, withholding tax on real estate income, opening tax on drinking establishments). These taxes remain deductible. As a result, the non-deductibility applies to Regions' own taxation.

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55 See chapter 3, page 99.

56 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 87).

**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 (57),
- interests considered “exaggerated”,
- application of the undercapitalisation rule,
- the consequence of the failure to comply with the permanency condition in the matter of PE.

Interests are considered “**exaggerated**” to the extent that they exceed an amount corresponding to the market rate of interest adjusted on the basis of particular elements such as the risk involved in the operation, the debtor’s financial situation and the term of the loan (58).

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 undercapitalisation** 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 disallowed expenses. However, some of them can be deducted from the taxable profits where they fulfil the conditions for exemption specified in articles 104, 3° to 5° and 107 of the Income Tax Code 1992 (see below 2.3.3.).

**WITHDRAWAL OF THE EXEMPTION FOR ADDITIONAL STAFF**

Taking on additional staff can entitle to a tax exemption (see below 2.3.3.).

This exoneration is withdrawn however when the staff in question is subsequently reduced.

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57 See infra, page 77.

58 The burden of proof lies with the taxpayer.

**CAR EXPENSES**

The deductibility limitation applies to motor cars, twin-purpose vehicles, vans and minibuses other than those exclusively used for paid conveyance of passengers. Are not concerned:

- vehicles exclusively used as taxis or for self-drive hire and which are therefore exempted from the circulation tax;
- vehicles used for car driving lessons via driving schools;
- vehicles exclusively leased to third parties.

Since 1 April 2007, the deductibility of the expenses has been computed according to CO<sub>2</sub> emissions per kilometre, on the following scale:

**Table 2.1.**  
**Deductibility of car expenses**

Diesel vehicles	Petrol vehicles	Deduction rate
CO <sub>2</sub> emissions g/km	CO <sub>2</sub> emissions g/km	In %
Less than 105	Less than 120	90
From 105 to 115	From 120 to 130	80
From 116 to 145	From 131 to 160	75
From 146 to 175	From 161 to 190	70
More than 175	More than 190	60

(\*) If there are no data available about CO<sub>2</sub> emissions of the vehicle, the 60%-rate applies.

Fuel remains totally deductible.

**NON-DEDUCTIBILITY OF SPECIFIC PROFESSIONAL EXPENSES**

Are especially concerned here:

- expenses and charges exceeding professional needs to an unreasonable extent,
- expenses in respect of clothing with the exception of specific working clothes,
- 31% 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 shall be irredeemable and shall be made, outside any statutory obligation, to an insurance company, a provident institution or an institution for occupational retirement provision established in one of the Member States of the European Economic Area.

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 (59), added to the other amounts the retirement entitles to, do not exceed 80% of the latest annual ordinary gross remuneration of a "normal" career (as a rule 40 years).

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

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

The amounts attributed by the company are considered disallowed expenses. Annex 1 to this chapter provides for a description of the calculation of the taxable amounts.

No gifts, participation exemption, investment deductions 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 TO DIVIDENDS**

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

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

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

- the interest allocated exceeds the limit set in Article 55 of the Income Tax Code 1992 taking into account the market rate of interest (60),
- the total amount of interest-yielding advances exceeds the total amount represented, at the beginning of the taxable period, by the paid-up capital at the end of the taxable period increased with the taxed reserves at the beginning of the taxable 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 (61).

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

Distributed profits also include payments made upon the acquisition of own shares (62) and upon a total or partial distribution of company assets (63).

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 25 March 2002 are liable to a 10% withholding tax.

60 See above "disallowed expenses".

61 This provision does not apply to interest allocated by the Co-operative societies recognised by the National Co-operation Council, nor to interest from bonds issued through a public call for funds.

62 The conditions and rules of application in the event of an acquisition of own shares are described in Art. 186 of the Income Tax Code 1992.

63 The provisions relating to the distribution of company assets are also applicable when the registered office or the principal seat of business is transferred abroad.

### **2.3.2. Breakdown of profits**

Taxable profits made up of the sum of reserves, disallowed expenses and dividends are subsequently broken down into two categories:

- The first category concerns profits earned in Belgium which are taxable at the full rate, and from 2003 on, profits earned abroad in a country Belgium has not concluded a double taxation agreement with.
- The second category concerns profits earned abroad in a country Belgium has concluded a double taxation agreement with and which are exempted from CIT. The second category is not taken into consideration in the calculation of the tax base.

### **2.3.3. Miscellaneous exemptions**

The following are deducted:

- the 13,840 euro exemption awarded for each additional staff member appointed in Belgium to a managing function in the export department or in the “total quality” department (64);
- exemption of 20% for the remunerations paid or allocated to workers in respect of whom the employer benefits a trainer’s bonus (65);
- the 5,150 euro exemption for each additional staff member in SMEs (66);
- gifts. The deduction of gifts can, however, exceed neither 5% of the taxable profit as computed in 2.3.1., nor 500,000 euro.

### **2.3.4. Participation exemption (PE) and exempted income from movable assets**

#### **A. Participation exemption**

#### **INCOME DEDUCTIBLE AS PE**

**Participation exemption** can be granted for:

- (a) dividends;
- (b) acquisition bonuses and liquidation bonuses, inasmuch as they constitute a dividend to which articles 186 (acquisition of own shares), 187 (partial repayment of a company’s capital) or 209 (total repayment of a company’s capital) of the Income Tax Code 1992, or similar provisions in foreign law apply (67).

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64 See chapter 3, page 102.

65 See chapter 3, page 103.

66 See chapter 3, page 102.

67 The participation exemption regime can apply to accounting capital gains realised from shares in SICAVs entitling to the participation exemption regime (SICAV 90%) (circular Ci.RH. 421/506.082 of 31.05.2006 and decision ARS (advance ruling service) n° 500.156 of 24.11.2005).

**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.
- 2° The second case of exclusion concerns income allocated or assigned by financing companies (68), money market funds (69) or investment companies (70) 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 (71).
- 5° The last case of exclusion concerns income obtained by companies, not being investment companies, distributing at least 90% of the 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 realised.
- 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 overcapitalised.
- 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.

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68 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.

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

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

71 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.

### **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 euro.

This participation threshold does not apply to income received by investment companies and allocated or assigned by them, and to income allocated or assigned by inter-municipal associations.

### **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.

### **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 (72):

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

Since tax year 2005, these disallowed expenses are not to be taken out of the base to which the participation exemption applies, if the dividend is allocated or attributed by a subsidiary established in the European Union (73).

The advantages which are not deductible as professional expenses and granted in the context of some private or public corruptions are also to be taken out of the base to which the participation exemption applies.

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

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72 This is made in order to prevent amounts from being deducted from those disallowed expenses because it would imply their non-taxability.

73 Subsidiaries are defined according to the Mother-Subsidiary Directive setting the participation conditions: at least 10% since 01.01.2009.

80 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
July 2010 issue.



**CARRY-OVER OF PARTICIPATION EXEMPTION SURPLUSES**

In case of lack or insufficiency of taxable profit remaining after the “third operation”, the remaining participation exemption can be carried over the next taxable periods, as a consequence of the “Cobelfret” judgment of the European Court of Justice (74) .

The Court considers indeed that the non-carry-over of the PE surpluses as envisaged in the Belgian PE system, is contrary to the Mother-Subsidiary Directive aiming at avoiding economic double taxation.

The carry-over of PE surpluses applies to dividends allocated or assigned by a company established at the time of the distribution:

- in a Member State of the European Economic Area (75), including Belgium;
- in a non-EU country with which Belgium has concluded a convention for the avoidance of double taxation including a clause providing for equal treatment as regards dividends;
- in another non-EU country than those mentioned above, provided the principle of free movement of capital applies to capital producing the dividends in question.

**B. Exempted 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. Deduction for patent income**

The deduction for patent income applies since tax year 2008.

Are taken into consideration: the patents or supplementary protection certificates registered by the company itself and that have been developed, wholly or partially, in the R&D centres of the company, as well as the patents, supplementary protection certificates or licences acquired by the company provided they had been improved in the R&D centres of the company.

“Patent income” means as well the income *stricto sensu* notably derived from the granting of licences, as the income which would have been received from a third party by the company having exploited patents on its own behalf. The income must be assessed on the basis of the remuneration which would have been agreed between independent companies.

The qualifying income must be included in the taxable income and the following expenses must be deducted:

- amortisation charge for the taxable period, on the investment value or cost price of the patents, provided it is deducted from the basic amount which is taxable in Belgium;
- compensation owed to third parties pertaining to these patents, deducted from the taxable result in Belgium.

The so determined income enjoys a 80% exemption. In case of insufficiency of profit, the balance of the deduction for patent income cannot be carried over the next taxable periods.

74 “Cobelfret judgment” (CJEC 12 February 2009; nr. C-138/07).

75 Or of the European Community as regards to dividends allocated or made payable before 1 January 1994.

### **2.3.6. Allowance for corporate equity**

The allowance for corporate equity or tax regime applying to notional interests (76) allows companies to deduct from their taxable profits a notional interest calculated on the basis of their corporate equity.

#### **OBJECTIVES OF THE MEASURE**

The objectives are:

- reinforcing the companies' net assets by lessening the fiscal discrimination existing at present between financing through own resources and financing through debt. Indeed, return on borrowed capital is entirely deductible, whereas return on risk capital is not;
- making the Belgian tax system more attractive for foreign investors by reducing the actual tax rate in Belgium;
- settling the issue of the 'coordination centres', the existing regime being phased out (see page 93).

#### **CALCULATION BASIS**

The allowance for corporate equity is based on the amount of the adjusted net assets the company was holding at the end of the taxable period preceding the period in the course of which the deduction is applied for.

The eligible net assets correspond to columns I to VI of the liabilities: paid-up capital, share premiums, re-evaluation capital gains, reserves, retained earnings and capital subsidies.

This calculation basis is then the object of several adjustments (77), aimed at avoiding cascading deductions, at excluding assets that are not taxable in Belgium by virtue of conventions for the avoidance of double taxation, and at preventing abuses such as the artificial incorporation of tangible assets in a company so as to increase the benefit from the notional interest deduction.

As to the variations in own resources registered during the taxable period, the risk capital taken into consideration is increased or diminished by the amount of these variations (calculated as a weighted average).

#### **RATE**

The reference rate for the notional interest deduction is determined each tax year on the basis of the average rate of the Belgian 10-year linear treasury bonds.

For companies recognised as SMEs according to article 15 of the Corporation Code (see page 68), in respect of the tax year covering the taxable period during which they have benefited from the notional interest deduction, this rate is increased by 0.50%.

The rate is set at 4.473% for 2009 and at 4.973% for SMEs (78).

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76 Act of 22.06.2005, BOJ of 30.06.2005.

77 See article 205<sup>ter</sup> of the Income Tax Code 1992.

78 For 2010 and 2011, the rate is set at 3.8% and 4.3% for SMEs.

**NON-ELIGIBLE COMPANIES**

Are not eligible for the notional interest deduction (article 205<sup>octies</sup>, Income Tax Code 1992):

- registered coordination centres still benefiting from the tax arrangements provided for by the Royal Decree n° 187 of 31.12.1982;
- companies set up within reconversion zones to which the provisions of the recovery law of 31.07.1984 apply for the taxable period;
- closed-ended UCITs (SICAF/BEVAK) and open-ended UCITs (SICAV/BEVEK); investment trusts;
- participation co-operatives set up in pursuance of the Act of 22.05.2001 concerning employee equity participation and employee participation in the profits of their enterprise;
- certain shipping companies.

**CARRY-OVER FOR INSUFFICIENCY OF PROFITS**

Where a taxable period for which the notional interest deduction is granted does not yield any profit or if the profit is not high enough to allow the notional interest deduction to be carried out in respect of that taxable period, the remainder of the deductible amount may be carried over and deducted from the profits realised during the next seven years. Beyond that period, any remaining balance granted for insufficiency of profits loses the tax advantage.

**SMEs HAVE TO CHOOSE BETWEEN THE INVESTMENT RESERVE AND THE ALLOWANCE FOR CORPORATE EQUITY**

SMEs, as defined in the Corporation Code, having constituted an exonerated investment reserve in the course of the taxable period, cannot combine this advantage with the benefit of the allowance for corporate equity, not only for the taxable period in question but also for the following two taxable periods.

**2.3.7. Deduction of previous losses**

Losses from previous taxable 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 (79).

**2.3.8. Investment deduction**

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

- for "green" R&D investments, "energy saving" investments, security investments and for patents;
- for investments aimed at the production of reusable packages and the recycling thereof;
- for investments aimed at the installation of smoke extraction systems or ventilation systems in hotels, restaurants and cafés;
- in the "spread deduction" form.

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

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79 See Art. 206 of the Income Tax Code 1992.

**2.3.9. Provisions which are common to the deductions**

None of the deductions mentioned in 2.3.3. to 2.3.8. can apply to:

- a) the part of the taxable profits corresponding to received abnormal or benevolent advantages or received financial advantages or advantages of any kind (80);
- 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 secret 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%.

**2.4.2. Reduced rates**

Reduced rates can be applied when the taxable profit does not exceed 322,500 euro.

**Table 2.2.**  
**Reduced CIT rates**

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 yield 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 coordination centre registered according to the Royal Decree n° 187 of 30.12.1982;
- the group must not hold shares with an investment value exceeding 50% of either the revalorised paid-up capital, or the paid-up capital increased by the taxed reserve and the accounting capital gains. The values taken into consideration are those at the closing date of the annual accounts of the shareholding company. 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.

80 "Received financial advantages or advantages of any kind" means advantages which have been received in the framework of private or public "corruptions" and which cannot be deducted by the payer.

**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 YIELD ON THE REGISTERED CAPITAL**

Entitlement to the reduced rates is also denied where the dividend yield on the registered capital effectively paid up which remains to be reimbursed at the beginning of the taxable 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 36,000 euro, shall not be less than the company's taxable income.

**CASE OF THE CO-OPERATIVE SOCIETIES RECOGNISED 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. Taxation of withdrawals on exempted reserves**

A special tax regime applies to withdrawals on some exempted reserves for tax years 2008 to 2010 (81).

These withdrawals are taxed at 25%. A rate of 14% (82) applies where the company invested, in the taxable period during which the withdrawal occurred, an equivalent amount in depreciable tangible or intangible assets. These assets are not required to be new but they cannot be considered as a re-investment to benefit other advantageous tax incentives (e.g.: the investment reserve or the spread deduction of capital gains). The company is not required to keep the investments in its possession.

**2.4.4. Tax credit for research and development**

A tax credit for R&D is granted for investments in patents and "green" investments.

**INVESTMENTS TAKEN INTO ACCOUNT**

The tax credit for R&D is granted for investments in tangible fixed assets newly acquired or constituted and in new intangible fixed assets, which are allocated in Belgium to the exercise of a professional activity.

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81 See above, page 73.

82 Rates applicable to tax year 2010.

**CALCULATION BASIS**

The present basis used for the calculation of the investment deduction, i.e. the investment value or yield value, is multiplied by the rate of the investment deduction, by distinguishing between the increased investment deduction and the spread investment deduction. Indeed, the tax credit can be applied in one go or be spread.

This calculation basis is then multiplied by 33.99% (nominal rate of corporation tax increased by the supplementary crisis contribution).

Example:

Investment R&D of 1,000 euro

Investment deduction rated at 15.5% (tax year 2010, investment R&D)

Spread investment deduction rated at 22.5% (tax year 2010, investment R&D)

Nominal rate of corporation tax fixed at 33.99% (supplementary crisis contribution included)

*Tax credit applied in one go:*

$1,000 * 15.5% * 33.99% = 52.68$  euro

*Spread tax credit (according to the accepted fiscal depreciation, e.g. over five years):*

$1,000 * 20% * 22.5% * 33.99% = 15.30$  euro

**ARRANGEMENTS**

Assets invested in R&D shall be used to this end for the whole period of depreciation. Otherwise, a part of the granted tax credit will have to be refunded.

**INCOMPATIBILITY**

Companies have to choose between the tax credit for R&D and the investment deduction for patents or for “green” investments. This choice is irrevocable.

**EXCLUSION FROM ENTITLEMENT TO THE TAX CREDIT FOR R&D**

The provisions relating to the exclusion of some fixed assets from entitlement to the investment deduction, also apply to the tax credit for R&D (83).

**CREDITING AND CARRY-OVER**

The tax credit fully applies to corporation tax. As appropriate, it can be carried over successively to the subsequent four tax years.

**Table 2.3.**  
**Offset ceiling of the R&D tax credit**

Total amount of the R&D tax credit to be carried over	Offset limitation per tax year
less than 145,920 euro	none
from 145,920 to 583,660 euro	145,920 euro max.
583,660 euro and more	25% of carry-over

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83 See chapter 3, page 99.

86 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
July 2010 issue.

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

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

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

The tax increase for lack or insufficiency of advance payments is, as a rule, calculated in the same way as for the PIT (84), **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%.

Companies established as from 2003 and benefiting reduced rates, are exempted from the tax increase during the first three financial years after their establishment (85).

#### **2.4.7. Crediting of withholding taxes**

##### A. Repayable taxes and payments

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

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

**With respect to dividends**, the crediting of the withholding tax is made conditional upon the requirement that the recipient has 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.

**With respect to interests**, the crediting of the withholding tax on income from movable assets 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 creditable FFTC corresponds to the tax actually withheld.

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84 See above page 64.

85 As from tax year 2011, the exemption of increase as regards advance payments will apply to companies defined as SMEs in the Corporation Code.

As regards interests, it is determined as follows:

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

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

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

A 300% tax, to be increased by the supplementary crisis contribution, applies to expenses or advantages of any kind which are not justified in the legal way and within the legal deadline, and to undisclosed reserves. This separate contribution or “secret commissions” system constitutes a professional expense.

Since tax year 2007, the separate contribution has also been applied to the advantages of any kind granted to workers and managers.

#### **Secret commissions regime**

**Old regime:** A distinction must be made between the regimes respectively applied to ordinary secret commissions and to authorised secret commissions.

In principle, *ordinary secret commissions* can be deducted as professional expenses. However, the company must pay a special 309% contribution on these secret commissions, which can be deducted as a professional expense.

*Authorised secret commissions* (in sectors where granting secret commissions is quite common practice) can also be deducted as professional expenses provided the Minister’s authorisation and payment of a minimum tax. The special contribution can also be deducted as a professional expense.

**New regime:** The Law of 11 May 2007 adapting the legislation as regards fighting corruption, repeals the regime with regard to *authorised secret commissions*. It also globally bans the deduction of the amounts used for private or public corruption in Belgium, or for corrupting foreign or international civil servants.

“Corruption” expenses no longer deductible as professional expenses, are still liable to the special contribution on secret commissions.



**ANNEX ONE TO CHAPTER TWO  
EMPLOYEE EQUITY PARTICIPATION AND EMPLOYEE PARTICIPATION IN  
PROFITS AND ENTERPRISE RESULTS**

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The Act of 22 May 2001 established a 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 fiscal provisions.

***Principles of the 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 financial 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 remunerations, 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' social contributions or employees' social 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 plan are **liable to corporation tax as disallowed expenses**. Neither are they considered a professional income nor a movable capital income. Half of the amount of CIT thus collected is transferred to the National Office of Social Security. No deduction of gifts, of participation exemption, for patent income, for corporate equity, of previous losses, or investment deduction can apply to the allocated amount considered as disallowed expenses.

### **Equity participation**

- As regards equity participations, the taxable amount is determined in function of the stock market price where listed shares are concerned and, where non-listed 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** (86) insofar as the participation plan provides for a non-redemption period that can neither be inferior to 2 years nor longer than 5 years. Where the non-redemption period is not respected, a supplementary 23.29% tax is charged (87).

### **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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86 This levy is a tax assimilated to income taxes. See Part II, chapter 8, page 256.

87 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 a cash remuneration.

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## ANNEX TWO TO CHAPTER TWO SPECIAL CORPORATE INCOME TAX REGIMES

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### ***The advanced ruling procedures***

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

### **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 credit 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.

### **Field of application**

The regime of advanced ruling is enforceable overall. This means that it also applies to the activities of distribution centres and service centres which benefited so far from an *ad hoc* regime. 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 (88).

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88 There are no more jurisdictions on the OECD list of uncooperative tax havens, because the last jurisdictions listed (Andorra, Liechtenstein and Monaco) made commitments to implement the OECD's standards of transparency and exchange of information.

- e) the application concerns a situation in respect of which it would be inappropriate to give an 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.

### 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 realised 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.

**Coordination centres** <sup>(89)</sup>

The regime applicable to coordination centres ends on 31 December 2010. New coordination centres can no longer be recognised. The authorisation held by a coordination centre is normally granted for renewable periods of 10 years. However, centres with an authorisation expiring after 2005 could no longer claim the renewal thereof until 2010.

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

- it must be part of a group whose consolidated capital and reserves reach 24 millions euro and whose consolidated annual turnover reaches 240 millions euro;
- its exclusive purpose must be the development and centralisation 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 coordination 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.

Coordination 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 187) is set off against CIT, but excesses, if any, are not reimbursed.

Decisions in respect of the cost-plus percentage only apply for five years.

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89 Royal Decree n°187 of 30 December 1982, last modified by the law of 27 December 2006.

### ***SICAFs and SICAVs***

Since the day of commencement of the law of 4 December 1990 on financial operations and markets, Belgian investment trusts can adopt three legal forms:

- Common funds;
- Closed-ended investment companies (SICAF/BEVAK);
- Open-ended investment companies (SICAV/BEVEK).

Unlike common investment funds which are undistributed, the two new legal forms (closed-ended investment companies and open-ended investment companies) are legal entities which are in principle liable to corporate income tax.

### *Taxation of investment companies*

An investment company's liability to corporate income tax is limited to its disallowed expenses (90) 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 participation exemption (PE).

This tax base is subject to the normal rate of CIT.

The investment company is, moreover, exempted from the proportional registration duties on capital subscription.

### *Attribution of income*

- Income from a capitalisation SICAV is considered a capital gain and is not liable to withholding tax on income from movable property (see below however "Income attributed to resident natural persons"). Nevertheless, 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 subfund within the same SICAV.
- Income from a distribution SICAV is considered a dividend and is therefore liable to the 15% withholding tax on income from movable property. Dividends distributed by a "PRICAF" (see below) are not subjected to the withholding tax on income from movable property up to an amount equal to the capital gains on shares realised by that PRICAF.

### *Income attributed to resident natural persons*

Income from a capitalisation SICAV is in principle non-taxable private savers (91). However, new rules have been applied since 1 January 2006 to capitalisation SICAVs having invested at least 40% in bonds and having a European passport (92). Since this date, capital gains obtained through the repurchase of own shares or through a partial or total distribution of the assets of the SICAV, are liable to the 15% withholding tax in respect of the part corresponding to the interest received by the SICAV. The withholding tax has also been levied since 1 January 2008 on capital gains generated by the pool of bonds, after deduction of losses. This withholding tax is a final tax.

The withholding tax on the income from distribution SICAVs or distribution SICAFs is also a final tax.

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

91 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.

92 This percentage can be assessed per SICAV subfund. In this case, the rule only applies to the subfunds exceeding 40%.

94 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
July 2010 issue.

### Income attributed to resident companies

Income from capitalisation SICAVs, distribution SICAVs and from SICAFs are treated similarly: they are taxable and the deduction for PE is only awarded to dividends received from a distribution SICAV insofar as the statutes of the SICAV stipulate that at least 90% of the income received or of the capital gains realised is distributed.

The respect of this condition can be assessed per subfund of distribution shares. Moreover, the coexistence of capitalisation shares and distribution shares within the same subfund is no impediment to the appliance of the participation exemption regime, inasmuch as at least 90% of the income from distribution shares is yearly distributed.

### Tax on the acquisitions and disposals

Stock exchange transactions are taxable at the following rates:

- acquisitions or disposals for a consideration of shares in capitalisation SICAVs: 0.50%;
- repurchase of its own shares by capitalisation SICAVs: 0.50%.

### **Organisations for Financing Pensions**

In the framework of the European Directive on the activities and supervision of institutions for occupational retirement provision (93), pension funds and social security funds shall become "Organisations for Financing Pensions" (OFPs).

OFPs are liable to corporate income tax but benefit a special tax status. Their tax base is the same as the one of SICAVs.

### **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. The private PRICAFs system was reformed in 2007 in order to make it more flexible and more attractive.

### 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 50,000 euro in cash. The shareholders may be neither members of the same family nor in-laws (94).

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 as from the third year.

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93 Directive 2003/41/EC of 3 June 2003.

94 The rules have however been made more flexible: the prohibition applies now to relatives up to the fourth degree.

### Tax regime of PRICAFs

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

### Tax regime of investors

#### **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 exempted from that withholding tax inasmuch as the dividends distributed originate from gains on shares realised by the PRICAFs or when the beneficiary is a foreign company inasmuch as the distributed income originates from dividends on shares or participations issued by foreign companies.

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

#### **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 realised on the participation in a private PRICAF are tax exempted 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.



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## CHAPTER THREE PROVISIONS COMMON TO PIT AND CIT

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### *What is new?*

- *Fiscal measures to support farmers.*
- *120% of security expenses can be deducted.*
- *Extension of the deduction for security investments to investments aimed at securing company vehicles.*

### 3.1. Tax regime of depreciation

The Income Tax Code authorises two depreciation methods (95): straight-line depreciation and declining balance 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 straight-line depreciation corresponding to the useful economic life. The taxpayer must apply a depreciation equal to the straight-line depreciation annuity starting from the taxable period in which this annuity exceeds the declining balance depreciation annuity.

However, declining balance depreciation annuity can in no case exceed 40% of the acquisition or investment cost.

Declining balance 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 declining balance 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 (96), the first annuity is apportioned in function of the number of days elapsed since the acquisition.

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

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95 In some cases, the straight-line depreciation can be doubled: see page 104.

96 See supra, chapter 2, page 74.

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 (97), 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. Expenses categories entitling to an increased deduction**

#### ***3.2.1. Deduction up to 120% of the expenses for staff collective transport***

Where minibuses, buses and coaches are used for the collective transport of the staff members between home and work, 120% of the expenses can be deducted by the employer or the group of employers.

#### ***3.2.2. Deduction up to 120% of security expenses***

Since 1 January 2009, a fiscal deduction up to 120% applies to some professional security expenses borne by the employer or a group of employers, i.e. subscription expenses paid to be connected to a telemonitoring station and expenses borne if a security firm has been hired (or collectively hired by a group of companies).

As far as companies are concerned, this increased deduction is exclusively granted to SMEs, defined as the companies of which the voting rights are held for more than 50% by natural persons and to SMEs to which the definition of “small companies” in the Corporation Code applies.

### **3.3. Investment incentives: investment deduction**

#### ***3.3.1. Principle***

The investment deduction (98) permits to deduct, from the tax base, a quota of the amount of investments made in the course of the taxable period.

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

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97 For motor vehicles, the additional costs must be written off at the same rate as the vehicle itself.  
98 Articles 68 to 77 of the Income Tax Code 1992.

98 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
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### 3.3.2. *Investments taken into account*

#### GENERAL RULE

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

#### INVESTMENTS TRANSFERRED TO THIRD PARTIES

When the investment concerns assets the use of which has been transferred to a third party, the latter being entitled to write them off, then the lessor will not be granted an investment deduction: 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 deduction 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 deduction:

- fixed assets which are not exclusively assigned for the exercise of a professional activity (99),
- investments financed through a coordination 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 (100).

### 3.3.3. *Calculation basis*

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

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

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

### **3.3.4. Applicable rates**

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

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

For companies the basic rate cannot be less than 3% and not more than 10%. For natural persons, the limits are set at 3.5% and 10.5%.

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

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

- investments by natural persons,
- 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 minimising the negative effects thereof on environment (+10 points);
- to investments in energy saving (+10 points);
- to investments aimed at the installation of smoke extraction or air treatment systems in horeca-outlets (+10 points);
- to fixed assets aimed at securing professional premises and their content, and company vehicles (+17 points).

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

- by 17 points for investments for ecologically safe R&D;
- by 7 points for other investments.

**Table 3.1.**  
**Rates of investment deduction – Tax year 2010**

Nature of the investment	Deduction rate	
	Natural persons	Companies
<b>Allowance in one go</b>		
Basic rate applicable to ordinary investment	5.5%	0%
Increased rates		
Patents (*)	15.5%	15.5%
“Green” R&D investments (*)	15.5%	15.5%
Energy saving investments	15.5%	15.5%
Smoke extraction or air treatment systems in horeca-outlets	15.5%	15.5%
Security investments	22.5%	22.5% 10%(**)
Investments made in order to promote reutilisation of refillable beverage packages and re-usable industrial products	n.a.	3%
<b>Spread deduction</b>		
“Green” R&D investments (*)	22.5%	22.5%
Other investments	12.5%	0%

(\*) Unless the company has chosen to benefit the tax credit for R&D. The taxpayer's choice is irrevocable.

(\*\*) Are only entitled to the 22.5% deduction rate: SMEs of which the voting rights are held for more than 50% by natural persons or SMEs to which the definition of “small companies” in the Corporation Code applies.

### 3.3.5. Arrangements

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

Natural persons employing less than 20 workers on the first day of the taxable period can opt for a system of simplified spread deduction (101).

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

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

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

**Table 3.2.**  
**Limitation of carry-over of investment deduction per taxable period**

Total deduction amount	Deductibility limitation
less than 858,330 euro	none
between 858,330 euro and 3,433,310 euro	858,330 euro maximum
3,433,310 euro and more	25% of carry-over

Where the company chooses for the tax credit for research and development, the above-mentioned amounts are halved, i.e. respectively 429,160 euro and 1,716,660 euro.

101 The condition with regard to the number of workers need not be met in order to be entitled to the spread deduction for “green” investments.

### 3.4. Employment incentives

#### 3.4.1. Exports and total quality management

An exemption (deduction from taxable profit) of 13,840 euro is awarded for each additional staff member employed in Belgium and directly assigned fulltime to the management of the export department (102) or to the management of the “total quality management” department.

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

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 taxable period. The exemption awarded is withdrawn in the event of a staff reduction.

#### 3.4.2. Exemption for additional staff with low incomes

Per taxable period and per additional staff member with a low income employed in Belgium 5,150 euro of the profits and proceeds obtained by an SME are tax exempted.

Are considered to be SMEs: enterprises declaring profits or proceeds and employing less than eleven wage or salary earners on 31 December 1997 or, where the company has started its activity after that date, on 31 December 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 account for the exemption:

- workers taken into consideration for the exemption for additional personnel, mentioned above sub 3.4.1. (see page 102);
- additional personnel whose gross salary exceeds 90.32 euro per day or 11.88 euro 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 5,150 euro per released member of the personnel.

After several extensions of the application period, the exemption for additional staff members with low incomes has become a **permanent** measure.

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102 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.

102 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
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### **3.4.3. Training periods (trainer's bonus)**

A tax incentive has been introduced to encourage employers to organise training periods: profits or gains reaped by employers who benefit a trainer's bonus, are exempted up to 20% of remunerations paid to workers in respect of whom employers benefit the training period bonus (103).

## **3.5. Fiscal treatment of regional aid**

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

Regional aid premiums, capital subsidies and interest subsidies constitute a taxable income for the beneficiary companies for the taxable period in which they are granted. However, capital subsidies benefit a spread tax regime: they are considered as profits for the taxable period concerned and the subsequent taxable periods proportionate to the depreciation approved as professional expenses, respectively at the end of the taxable period concerned and in the course of any subsequent period and, where appropriate, up to the balance when the fixed assets are transferred or put out of circulation.

Nevertheless, since the Act of 23 December 2005, some regional aid measures are exempted in respect of CIT (see chapter 2, page 72).

However, the tax regime prior to the modifications introduced by the Act of 23 December 2005 still applies to former subsidies and to each regional aid not concerned by the exemption.

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103 The *trainer's bonus* (or training period bonus) is part of the Intergenerational Solidarity Pact's measures. This bonus is granted by the NEO (National Employment Office) to employers offering training periods to young people obliged to attend school on a part-time basis.  
The NEO pays a starting bonus to young people who undertake an apprenticeship in a company within the framework of a work and training programme.

### **Agricultural support measures**

The support measures apply to premiums and capital and interest subsidies paid between 2008 and 2010 to agricultural companies liable to PIT and CIT. They also apply to suckler cow premiums and premiums regarding entitlements for the single payment, which have been introduced by the European Communities to support the agricultural sector.

#### **As far as PIT is concerned**

An exemption applies to *interest and capital subsidies* paid in 2008, 2009 and 2010 by the competent regional institutions to farmers/natural persons, for the acquisition or constitution of tangible or intangible fixed assets.

*Suckler cow premiums and premiums regarding entitlements for the single payment, which have been introduced by the European Communities to support the agricultural sector, are separately taxed at 12.5%.*

This regime also applies in the framework of the lump sum tax scheme for farmers.

#### **As far as CIT is concerned**

A reduced rate of 5% applies to premiums and subsidies granted between 2008 and 2010, which were notified on 1 January 2008 at the earliest.

#### *Conditions for the granting of the reduced rate of 5%*

The subsidies must concern investments in tangible or intangible fixed assets, which are not considered as a re-investment in the framework of the exemption regime for capital gains on company vehicles, of the exemption regime for capital gains on inland waterway vessels, of the spread taxation of capital gains and of the exempted investment reserve.

No deduction of gifts, of participation exemption, for patent income, for corporate equity, of previous losses, or investment deduction can apply to the taxable base consisting of subsidies taxed at 5%.

No withholding tax, fixed foreign tax credit or tax credit can be set off against the separate taxation at 5%.

### **3.5.2. Doubling of straight-line depreciation**

The doubling of straight-line depreciation (104) applies to certain investments in buildings, tools and equipment which enjoy regional aid (or, formerly, the laws of economic expansion).

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

This provision is no longer applicable in the Walloon Region.

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104 See Art. 64*bis* of the Income Tax Code 1992.

104 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
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### **3.5.3. Exemption from withholding tax on real estate income**

The exemption from withholding tax on real estate income (105) is awarded to real estate investments for which the company enjoys regional aid (interest subsidies or capital subsidies). This exemption is awarded for a maximum of 5 years dating from January 1st following the occupation; it relates both to the buildings and the land forming part of the same cadastral plot and to the equipment and tools that are immovable by their very nature or by their purpose.

## **3.6. Tax arrangements for capital gains**

### **3.6.1. New definition of realised capital gain**

In the context of the introduction of the allowance for corporate equity, the definition of realised capital gain (article 43, Income Tax Code 1992) has been modified (106). Since tax year 2007, only the net amount (after deduction of the realisation costs) of capital gains is exempted. This new definition has an impact on the calculation of the amount of the exempted capital gains and of capital gains which are taxed in a separate, spread or aggregated way.

### **3.6.2. Capital gains realised during exploitation**

#### **A. Capital gains intentionally realised 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 or equal to 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 taxable period during which the property ceases to be allocated to the exercise of the professional activity.

The spread 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 taxable 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 taxable 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 (107).

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105 Cf. laws of 17.07.1959 and 30.12.1970.

106 Circular n° Ci.RH.241/576.972 of 06.04.2006.

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

B. Capital gains intentionally realised 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 exempted, 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 "upstream taxation requirement" applicable to participation exemption (PE) (108). 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.

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**.

D. Capital gains from inland waterway vessels

Capital gains realised through the alienation of commercial inland waterway vessels, are totally exempted, where an amount equal to the compensation or to the realisation value, is re-invested in inland waterway vessels meeting some environmental standards.

The regime applies to (forced or intentionally realised) capital gains realised since 1 January 2007 and inasmuch as the realisation date relates at the earliest to the taxable period linked to tax year 2008.

If the capital gain has been intentionally realised, it must relate to an inland waterway vessel being naturally a fixed asset since more than five years.

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108 See above, page 78.

### 3.6.3. Capital gains realised upon the cessation of a professional activity

Capital gains realised upon the cessation of a professional activity are capital gains realised 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 to capital gains on stocks and contracts in progress and to capital gains on intangible, tangible and financial fixed assets and on other portfolio securities (109).

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 33% rate applies; for the balance, the separate taxation does not apply. Where the discontinuation is the result of the taxpayer's decease, where it is a forced final cessation or where the taxpayer is more than 60 at the time the cessation of activity is registered, the 16.5% rate applies.

### 3.7. Other: 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 recognised, subsidised or authorised by *Kind en Gezin*, *l'Office de la naissance et de l'enfance (ONE)* or the government 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 7,270 euro per newly created or maintained accommodation.

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



## 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 legal entities income tax:

- the State, Communities, Regions, provinces, agglomerations, federations of municipalities, municipalities, public social assistance centres and public clerical institutions (authorities managing church property);
- inter-municipal associations as well as certain institutions designated by name: National Delcredere Office (= national export credit insurance office), the “Société régionale wallonne de transport public de personnes” (Walloon public transport company), the “Vlaamse Vervoermaatschappij” (Flemish public transport company), the “Société des transports intercommunaux de Bruxelles - Maatschappij voor het Intercommunaal Vervoer te Brussel” (Brussels public transport company) (110), 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 1,730 euro bracket of income from savings deposits and the first 170 euro bracket of dividends from recognised 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 taxpayers 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 at source, the withholding tax is due by the recipient of the income.

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110      Respectively TEC, De Lijn and STIB-MIVB.

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

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

- a) Certain types of real estate income, notably net income from land and buildings situated in Belgium and leased, are subject to a tax of 20%. This tax only applies to category 3.
- b) Capital gains made through the disposal for consideration of developed or undeveloped real estate are taxable at 16.5% or 33% 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 (111). This applies to category 3.
- d) Expenses or advantages of any kind which are not justified and financial advantages or advantages of any kind, are taxable according to the same arrangements as for CIT (contribution of 300% on secret commissions). This does not apply to category 1.
- e) Pension contributions and pensions considered as disallowed expenses under CIT, as well as financial advantages or advantages of any kind, are liable to a 33% 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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111 See page 23.

**CHAPTER FIVE**  
**WITHHOLDING TAX ON REAL ESTATE**

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*What is new?*

- *In the Walloon Region: introduction of a reduced rate of withholding tax on real estate for passive houses; more restrictive conditions in the framework of the rebate for unproductiveness and in the framework of the reduction for modest dwelling.*
- *In the Brussels-Capital Region: the application of the reduced rate of withholding tax on real estate to social dwellings has been extended.*
- *In the Flemish Region: partial exemption in case of demolition work in order to build a replacing construction.*

**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 2010, the index coefficient is the same as in 2009 because indexation has been frozen. It has been set at 1.5461.

The rate of the withholding tax on real estate income includes 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	Brussels-Capital Region
Basic rate	2.5	1.25	1.25
Social dwelling	1.6	0.8 (b)	0.8 (e)
Material and equipment	1.95 (a)	1.25 (c)	1.12 (f)
Passive houses		reduced rates (d)	

*In the Flemish Region:*

- (a) *For income earned in 2010, the rate is the same as in 2009 because of a frozen indexation and its impact on the coefficient used to calculate this rate. The rate amounts to 2.5% multiplied by a coefficient obtained by dividing the average of the price indices of 1996 by the average of the price indices of the year preceding the year in which the income was received, which resulted in a rate of 1.95 for income earned in 2009.*

*In the Walloon Region:*

- (b) *The reduced rate of 0.8% applies to houses belonging to the SRWL (a regional housing board), to companies recognised by it and to houses belonging to the FLFNW (a cooperative housing company with limited liability). This rate also applies to dwellings leased or managed by a real estate manager in conformity with the Walloon Housing Code (e.g. by a social real estate agency).*
- (c) *The 1.25% rate applies to the cadastral income indexed until 2002. The indexation has been frozen since 1 January 2003.*
- (d) *As from tax year 2010, a reduced rate temporarily applies to real estate renewed in order to convert it into a passive house. The rate amounts to 0.25% for the first tax year following the year during which it is established that the dwelling is a passive house. For the second, third and fourth tax years, the reduced rate amounts respectively to 0.5%, 0.75% and 1%. As from the fifth tax year, the normal rate of 1.25% applies again.*

*In the Brussels-Capital Region:*

- (e) *As from 1 January 2010, the application of the reduced rate of 0.8% has been extended to the building (of part of the building) put on lease by social real estate agencies located in the Brussels-Capital Region.*
- (f) *For income earned in 2010, the rate is the same as in 2009 because of a frozen indexation and its impact on the coefficient used to calculate this rate. The 1.25% rate is multiplied by a coefficient obtained by dividing the average of the price indices of 2004 by the average of the price indices of the year preceding the tax year, which resulted in a rate of 1.12 for income earned in 2009. This amounts to freezing indexation as from 1 January 2005.*

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 for built real property

### 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 domain, 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 for the dwelling which is, according to the population register, the main residence of the taxpayer where the **non-indexed** cadastral income of the taxpayer's global real estate situated *in the Flemish Region* does not exceed 745 euro. The standard rate of this reduction 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 increased reduction if he has received a subsidy for the construction or the acquisition of that dwelling house.

#### REBATE FOR DEPENDENTS

Rebates for dependents are granted as a lump sum and are independent of the concept of "dependent children" used in respect of personal income tax. In order to entitle to this rebate, a child must entitle to child benefits and be part of the household in 1 January of the tax year. A disabled child counts for two.

These rebates are granted, from two children onwards, according to the following scale.

*Table 5.2.  
Rebate of withholding tax on real estate income for dependents – Flemish Region*

Number of children taken into consideration	Total amount of the rebate (in euro)
2	6.90
3	10.93
4	15.30
5	20.06
6	25.16
7	30.65
8	36.51
9	42.73
10	49.35

*Ministerial Decree of 2 April 2010 (BOJ of 9 April 2010).*

## WITHHOLDING TAX ON REAL ESTATE

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These rebates 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 euro*

*Surcharges: 3,000*

*Dependent children: 2*

*Computation withholding tax on real estate due to Region:  $(1,000 \times 0.025) - 6.90 =$  18.10*

*Computation withholding tax due to local authorities:  $18.10 \times 30 =$  543.00*

*Total withholding tax: 561.10*

### **DISABILITY AND INFIRMITY**

War invalids are granted a 20% rebate.

The rebate for disabled people (112) (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 a rebate of the withholding tax on real estate for a disabled person, which is equal to the rebate 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 right in rem because of a disaster or because of a case of force majeure.

### **REDUCTION ON ENERGY SAVING BUILDINGS**

Since tax year 2009, a new reduction of the withholding tax on real estate for energy saving buildings has been introduced in the Flemish Region.

This reduction applies to the following three building categories:

- a dwelling house with an energy level (E-level) of maximum E60 on 1 January of the tax year;
- a building other than a dwelling house (e.g. an office) with an E-level of maximum E70 on 1 January of the tax year;
- a building (dwelling house or other) with an E-level of maximum E40 on 1 January of the tax year.

The E-level of the building is mentioned in an energy report – or EPB-report (113) – which must be drawn up for each new construction.

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

113 "EPB-regulations" means regulations relating to energy performance in buildings.

114 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
July 2010 issue.

The reduction amounts to 20% of the withholding tax for the first two categories and to 40% for the third category. It is granted for a period of ten years and can be combined with the rebates for dependents, for a modest dwelling house and for disability and infirmity (114).

#### EXEMPTIONS

Is exempted 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;
- real estate that is within the scope of the forest decree of 13 June 1990, and that is recognised as a nature reserve or as a forest reserve.

Moreover, two other exemptions are in force: the first is granted where premises used for commercial purposes are converted into dwelling houses; the second is granted in respect of renovation of houses unfit for human habitation (partial exemption limited to the part of the CI exceeding the CI fixed before the start of the renovation work) or in case of demolition work in order to build a replacing construction. Both exemptions are granted for three or five years but they cannot be granted concurrently.

#### 5.2.3. Walloon Region

Since 2004, the rebate of withholding tax on real estate has been applied to only one dwelling, to be designated by the taxpayer. Only the reduction for a modest dwelling is still 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.

#### REDUCTION FOR A MODEST DWELLING

A reduction is granted for the dwelling which is the taxpayer's **sole** dwelling on 1 January of the tax year and which is personally occupied by the taxpayer on the same date, where the **non-indexed** cadastral income of the taxpayer's global real estate *located in Belgium* does not exceed 745 euro.

To determine whether the dwelling is or not the sole dwelling, the real estate *located in Belgium or abroad* must be taken into consideration, with the exclusion of certain dwellings (other dwellings of which the owner is only bare owner, dwellings for which the taxpayer has actually granted his right in rem, dwelling which is not personally occupied because of legal or contractual obstacles, or because of the progress of building or renovation work).

The standard rate of the reduction for a modest dwelling 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.

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114 For further information about the new reduction of withholding tax on real estate: [www.onroerendevoorheffing.be](http://www.onroerendevoorheffing.be) (only available in Dutch).

## WITHHOLDING TAX ON REAL ESTATE

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### REBATE FOR DEPENDENTS

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

Spouses or the legal cohabitants (not disabled) do not entitle to the rebate.

#### *Example*

*Cadastral income: 1,000 euro*

*Surcharges: 3,000*

*Dependent children: 2*

*Computation withholding tax on real estate due to Region: (1,000 x 1.25%) = 12.50 euro*

*Computation withholding tax due to local authorities: 30 x 12.50 = 375.00 euro*

*Rebate for dependent children: 2 x 125 euro = - 250.00 euro*

*Total withholding tax: 137.50 euro*

### DISABILITY AND INFIRMITY

War invalids are granted a 250 euro rebate for the dwelling they occupy as owners or tenants; a disabled taxpayer is entitled to a 125 euro rebate. These rebates cannot be granted concurrently.

### 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 180 days in the year.

The unproductiveness must be involuntary. The only fact that the real estate has been simultaneously put on lease and on sale by the taxpayer is not sufficient to prove the unproductiveness.

The rebate or reduction for unproductiveness is now only granted for maximum 12 months. This limitation does not apply where the taxpayer is unable to exercise his right in rem because of a disaster or a case of force majeure.

### EXEMPTIONS

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

- service-flats, child care facilities for children under three years of age and care and accommodation facilities for disabled persons;
- real estate situated in the Walloon Region and recognised as a "Natura 2000" territory, a nature reserve or a forest reserve;
- dwellings owned by a natural person and leased or managed by a real estate manager in conformity with the Walloon Housing Code, provided a written agreement has been concluded between the taxpayer and the real estate manager, determining the period during which the dwelling is made available, the amount of the rent asked by the natural person and, if need be, the description of the work to be done.

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 1 July 2004 on), if they realise certain investment programs.

### 5.2.4. Brussels-Capital Region

#### REDUCTION FOR A MODEST DWELLING

A reduction is granted for the dwelling entirely occupied by the taxpayer himself where the **non-indexed** cadastral income of the taxpayer's global real estate located in Belgium does not exceed 745 euro. 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.

#### REBATE FOR DEPENDENTS

A 10% rebate is granted for each dependent child, provided the head of the family who claims the rebate has at least two children alive on 1 January of the year.

#### *Example*

*Cadastral income: 1,000 euro*

*Surcharges: 3,000*

*Dependent children: 2*

*Computation withholding tax on real estate due to Region: (1,000 x 1.25%) =*

*12.50 euro*

*Computation withholding tax due to local authorities: 30 x 12.50 =*

*375.00 euro*

*Subtotal:*

*387.50 euro*

*20% rebate for 2 dependent children:*

*- 77.50 euro*

*Total withholding tax:*

*310.00 euro*

#### DISABILITY AND INFIRMITY

War invalids are granted a 20% rebate and disabled people a 10% rebate for the dwelling they occupy as owners or tenants. These rebates cannot be granted concurrently.

#### 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 Brussels-Capital Region, this reduction is only granted under specific conditions (115).

#### EXEMPTIONS

Is exempted from the withholding tax in the Brussels-Capital Region, the cadastral income of goods that are part of the protected patrimony and that are neither let nor exploited.

115 The conditions were set in the ordinance of 13 April 1995 amending the ordinance of 23 July 1992 concerning withholding taxes on real estate (BOJ of 13 June 1995). In its judgment of 19 December 2002 the Constitutional Court considers this ordinance to be in conflict with the articles 11 and 12 of the Constitution.

### 5.3. Crediting of withholding tax on real estate

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

Where the taxpayer is entitled to the deduction for sole own dwelling under PIT, the cadastral income of the building whose acquisition entitles to the deduction, is not included in the taxable base. Consequently, it no longer entitles to the crediting of withholding tax on real estate.

### 5.4. Withholding tax on real estate for investments in material and equipment

#### 5.4.1. Definition

"Material and equipment" means devices, engines and other facilities useful for commercial, industrial or craft enterprises, except from premises, shelters and their necessary accessories (cf. article 471 §3, Income Tax Code 1992).

Where material and equipment are housed in built or unbuilt real property, the Cadastral administration fixes a separate cadastral income for those elements.

#### 5.4.2. Flemish Region

##### NEW INVESTMENTS OR INVESTMENTS AIMED AT REPLACING MATERIAL AND EQUIPMENT

Until tax year 2008 included, a distinction must be made between *totally new* investments in material and equipment (i.e. placed on plots where there were no material and equipment on January 1<sup>st</sup>, 1998) and *replacement investments* (i.e. investments in new material and equipment, aimed at replacing existing material and equipment).

A total exemption from withholding tax on real estate was granted on the CI (cadastral income) of totally new investments. On the contrary, a partial exemption was granted for replacement investments leading before 1 January 2008 to an increased CI in comparison to the CI existing on 1 January 1998; it was limited to the portion of the CI exceeding the CI fixed on 1 January 1998.

##### EXTENSION OF THE EXEMPTION FOR REPLACEMENT INVESTMENTS

As from tax year 2009, a total exemption is granted for every investment in new material and equipment (as well totally new as replacement investments) for which a CI has been fixed as from 1 January 2008.

However, for companies belonging to the target group to the attention of which the Flemish Government drew up an energy agreement, the new exemption is granted provided that these companies accede and comply with this agreement. Failing that, the previous exemption (with the abovementioned limitation as regards the CI on 1 January 1998) still applies to their replacement investments. As far as companies not belonging to the target group are concerned, the exemption is total and unconditional.

### **5.4.3. Walloon Region**

The CI of material and equipment is exempted from withholding tax on real estate where the CI of the assets existing on 31 December 2004 is lower than 795 euro per cadastral parcel.

The CI of material and equipment is also exempted from withholding tax on real estate for new investments acquired or constituted as new as from 1 January 2005. This exemption is total or partial depending on whether, on 31 December 2004, material and equipment had already been housed on the cadastral parcel (on which the new investments are acquired or constituted as new). In the event of an affirmative reply, the exemption only applies to the part of the CI of material and equipment of that parcel exceeding, after 1 January 2005, the CI which exists on 1 January 2005.

Finally, a new unconditional exemption from withholding tax on real estate applies to investments in material and equipment acquired or constituted as new from 1 January 2006 on.

### **5.4.4. Brussels-Capital Region**

Since 1 January 2006, a tax credit has been granted by the Brussels-Capital Region to natural persons or legal entities liable to withholding tax on material and equipment. This tax credit is totally chargeable to the Brussels-Capital Region.

This tax incentive for businesses is granted as a tax credit, so as to allow local entities and the urban area of Brussels to keep on collecting additional surtaxes on the withholding tax on real estate.





## CHAPTER SIX WITHHOLDING TAX ON INCOME FROM MOVABLE PROPERTY

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### *What is new?*

*Transition to the system of automatic exchange of information in the framework of the Savings Directive.*

#### **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, is assimilated to dividends if and to the extent that:

- either the interest rate exceeds 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 taxable period, increased by the taxed reserves existing at the beginning of the taxable 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 recognised 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 1 January 1994 pursuant to a public call for funds;
- b) dividends from shares issued, as from 1 January 1994, pursuant to cash contributions and which, since their issue:
  - have been registered with the issuer;
  - have been placed in Belgium in an open deposit with a bank, a public credit institution, 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 listed on a stock exchange or dividends from SMEs of which a part of the capital has been entered by a "PRICAF" (= Private equity closed-end UCIT); SMEs are defined here as companies of which more than half of the shares, representing the majority of voting rights, are in the hands of one or several natural persons;
- e) dividends distributed by a cooperative participation company within the framework of a plan relating to workers' participation in the capital and profits of their company (Act of 22 May 2001).

### "PARENT-SUBSIDIARY" DIVIDENDS

Dividends allocated by a subsidiary to its parent company are exempted from withholding tax inasmuch as the parent company is located in another Member State of the European Union than Belgium or in a State with which Belgium has concluded a double taxation convention (116). At the time income is attributed, the parent company shall have maintained, during an uninterrupted period of at least one year, a minimum share of 10% in the capital of its subsidiary.

The extension of the exemption from withholding tax on participation dividends to dividend payments to a contracting State (non-Member of the European Union), applies to dividends allocated or made payable as from 1 January 2007.

### 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 (117).

This provision concerns income granted or made payable as from 1 January 2002. Insofar as gains on liquidation are concerned, the provision applies to liquidations realised as from 25 March 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 1 March 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 dematerialised securities.

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116 The extension of the exemption is subordinated to an additional condition: there shall be no restriction as regards the exchange of information which are necessary to apply the provisions of the contracting State's national law.

117 See Chapter 2, page 77.

122 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
July 2010 issue.

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

### SAVINGS DEPOSITS

The first 1,730 euro bracket of a yearly income from ordinary savings deposits is exempted from withholding tax on movable property if the beneficiary is a natural person.

Each spouse or legal cohabitant is entitled to the exemption. The double exemption also applies when only one savings account has been opened in the name of both spouses or legal cohabitants.

#### Exemption conditions for savings books

The exemption applied to the first bracket of interest from ordinary savings deposits is submitted to miscellaneous conditions. These exemption conditions have been recently modified in order to give more transparency to savers. Three major changes came into force on 1 April 2009: abolition of the growth bonus; linking of the base rate to the European Central Bank's key interest rate; fluctuation band as regards loyalty bonus which must amount to between 25% and 50% of the base rate.

Hereafter is presented an overview of the main exemption conditions of the first bracket of interest from savings books, as detailed in article 2 of the Royal Decree implementing the Income Tax Code 1992.

#### - Conditions for the withdrawal from savings books

The conditions should provide for the possibility for the depository bank to require a prior notice of five calendar days to withdraw amounts exceeding 1,250 euro, and to limit withdrawals to a maximum of 2,500 euro per half month.

#### - Income components

Income from savings deposits consists compulsory and exclusively of a base interest rate and a loyalty bonus. The growth bonus can no longer be granted.

A *transitory regime* applies to deposits existing before 1 April 2009. Growth and loyalty bonuses granted before 1 April 2009 shall continue to run until respectively 31 December 2009 at the latest and 31 March 2010.

#### - Level of income from savings deposits

The base interest rate cannot exceed one of the legally fixed rates. Indeed, it cannot exceed the highest of the following rates: either 3%, or the rate applied by the ECB for its main refinancing operations on the 10<sup>th</sup> day of the month preceding the current calendar six-month period (i.e. the ECB's rate on 10 December 2009 for the first six-month period of 2010 and on 10 June 2010 for the second six-month period of 2010).

In principle, the rate of the loyalty bonus cannot exceed 50% of the maximum base interest rate and cannot be less than 25% of the base interest rate granted.

- *Only one base rate* can now be granted for a same savings book (and not several base rates applicable to different brackets of the book).

- Calculation method of the *loyalty bonus* and period over which it must be calculated

A loyalty bonus is granted for each amount invested for twelve consecutive months in the same savings book or for each amount remaining invested for at least twelve consecutive months in the same year and savings book.

The loyalty bonus is calculated as from the day following the deposit day.

### **CAPITALISATION BONDS**

With respect to financial products with compulsory or elective capitalisation, 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.

### **PARTICULAR CASE: CAPITALISATION SICAVs**

Capitalisation SICAVs with more than 40% invested in bonds are subject to a withholding tax on income from movable property of 15%. This withholding tax is levied on bond interest from capitalisation SICAVs (interest received as from 1 July 2005) and has been extended since 1 January 2008 to capital gains from the pool of bonds, after deduction of capital losses.

These SICAVs shall have a European passport and have been issued on or after 1 March 2001.

### **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 exempted 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. This holding must be or have been maintained during an uninterrupted period of at least one year.

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 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 exempted of the withholding tax, lies with the debtor of the income.

#### **6.2.4. Savings Directive**

The Directive on taxation of savings income in the form of interest payments entered into force on 1 July 2005.

The aim of the Directive is to bring about effective taxation of interest payments made to individuals within the European Union from cross-border savings investments.

This Directive provides for a **system of automatic exchange of information** in respect of interest payments made by “paying agents” established within a Member State to private individuals resident in another Member State. Interest payments received by an individual in a Member State that is not his residence for tax purposes have to be communicated by this Member State to the tax authorities of the beneficiary’s country of residence.

The interest payments referred to in the Directive are interest payments related to debt claims of every kind, obtained directly or resulting from indirect investment via undertakings for collective investment: accounts and deposits, fixed rate securities, interest distributed by some collective investment institutions (CII’s) with a European passport and capital gains on parts in certain CII’s.

Variable yield investments and insurance products do not currently come under the Directive.

During a transitional period, of which the termination date has not yet been determined, Belgium, Luxemburg and Austria have been authorised to levy a “State of residence tax”. Switzerland also decided to apply this system. According to the principle of the “State of residence tax”, a withholding tax is levied by those countries instead of communicating to the State of residence the information in their possession (118).

Belgium decided to apply the system of automatic exchange of information as from 1 January 2010.

For Belgian residents who received interest in a country levying the withholding tax, the “State of residence tax” is not a final tax. The individual receiving interest payments has to report them in his tax return in his country of residence. Double taxation of income is avoided thanks to a compensation system. If the interest received has been subject to withholding tax, the beneficiary is entitled to a creditable and refundable tax credit equal to the amount of tax withheld. In both cases the same amount will be paid, without prejudice to the application of additional municipal taxes.

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118 The withholding tax has been levied at a 20% rate since 1 January 2008, which will be increased to 35% on 1 July 2011.

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

There are five distinct categories of investors:

- “**financial institutions**” (FI) means 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) means health insurance funds and institutions created in the framework of social legislation,
- “**professional investors**” (PI) means companies liable to CIT and Belgian branches of foreign companies liable to NRIT (non-resident income tax),
- “**private savers**” (PS) means 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 summarises the most important exemptions (E), some of which are conditional (E\*), per category of investors and per category of income.

**Table 6.1.**  
*Exemptions per category of 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 for income which has been registered nominally by the issuer.
- (b) The tax exemption is granted for income from debt-claims and securities the beneficiary of which is identified.
- (c) For the first 1,730 euro bracket of interests only (see supra).
- (d) For deposits with financial institutions only.

**6.3. Withholding tax on income from movable property on copyright and related rights**

The regime for copyright and related rights is described in Chapter I, on page 19.

A withholding tax on income from movable property of 15% is levied on income from copyright. It is a final tax for income from copyright which are taxable as income from movable property. It is levied, on the one hand, on the whole non-professional income from copyright and, on the other hand, on the first bracket (up to 51,920 euro) of copyright from a professional activity.

## CHAPTER SEVEN

### WITHHOLDING TAX ON EARNED INCOME AND ADVANCE PAYMENTS (AP)

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#### *What is new?*

- *Because of the negative inflation in 2009, it was decided not to index in 2010 the calculation parameters of the withholding tax on earned income.*
- *New rules as regards the tax credit in the Flemish Region.*
- *Modification of the lump sum expenses for company managers.*
- *Extension of the exemptions from withholding tax on earned income.*

This chapter relates to withholding tax on earned income and to advance payments of the year 2010.

#### **7.1. Computation of the withholding tax on earned income (119)**

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 seven main steps (120):

- 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 zero-rate band,
- taking into consideration of the family situation,
- application of the tax credits,
- 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 legal or assimilated administrative status. The special social security contribution is not deductible though.

##### **B. Deduction of lump sum professional expenses**

The annual income is then transformed into a net annual income by subtracting the **lump sum professional expenses**.

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119 The ways of implementation applicable to the withholding tax on earned income allocated or made payable as from 1 January 2010 are published in the BOJ of 11 December 2009 and of 15 January 2010.

120 The 7% local surtaxes have been taken into account for the calculation of the withholding tax on earned income.

**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 - 5,200.00	0	25%
5,200.00 - 10,320.00	1,300.00	10%
10,320.00 - 17,180.00	1,812.00	5%
17,180.00 - 60,680.00	2,155.00	3%
60,680.00 and more	3,460.00	0%

**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 an own earned income consisting exclusively of pensions, annuities or assimilated benefits exceeding a monthly net amount of 117 euro. "Net" amount means the amount after deduction of social security contributions and after deduction of 20% of the remainder.

From 1 January 2004, legal cohabitants have been assimilated to 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	"base tax"	
	on lower limit	% above lower limit
0 - 7,900	0.00	26.75%
7,900 - 10,740	2,113.25	32.10%
10,740 - 15,560	3,024.89	42.80%
15,560 - 34,360	5,087.85	48.15%
34,360 and more	14,140.05	53.50%

A particular provision applies:

- where the beneficiary's spouse has no earned income of his/her own;
- where, on 1 January 2010, the beneficiary's spouse has an own earned income consisting exclusively of pensions, annuities or assimilated benefits not exceeding a monthly net amount of 117 euro. "Net" amount means 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 9,280 euro. The amount attributed is "Income B", the remainder being "Income A";
- the common scale is then applied to both Income A and Income B;
- finally, the addition of both results gives the "base tax".



D. Taking into consideration of the zero-rate band

When the common scale, as mentioned in Table 7.2, applies as it is, the base tax computed according to that scale shall be reduced by 1,463.23 euro, but this reduction shall on no account result in a negative base tax.

When the particular provision applies, which divides the taxable income in two parts (one-earner families or equivalent), the “base tax” which result from adding the results of the application of the scale to “Income A” **and** “Income B”, is reduced by 2,926.46 euro, but this reduction shall on no account result in a negative base tax.

E. The family situation

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

**Table 7.3.**  
**Reductions of withholding tax for dependent children and specific family situations (121)**

Number of dependent children and specific family situations	Annual reduction
1	372
2	1,008
3	2,688
4	4,920
5	7,260
6	9,612
7	11,952
8	14,472
for each child beyond the eighth	2,604
single person (except where the taxable income consists of pensions or pre-pensions)	264
widow(er) not married again, with dependent children	372
single parent family	372
disabled taxpayer (122)	372
for ascendants and collaterals up to the second degree and aged 65 at least: for each dependent person	756
for all other dependent persons	372

A tax credit of 1,170 euro is yearly granted where the income beneficiary’s **spouse** has **own professional income not consisting of pensions, annuities or assimilated benefits** and not exceeding 195 euro per month.

A tax credit of 2,340 euro is yearly granted where the income beneficiary’s **spouse** has **own professional income exclusively consisting of pensions, annuities or assimilated benefits** and not exceeding 390 euro per month.

The ceilings of 195 euro and 390 euro per month are assessed on the basis of 80% of the gross income after deduction of the social security contributions.

121 Disabled children and other disabled dependent persons count for two.

122 This reduction applies to each of the spouses.

F. Other tax credits

- 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 “base tax”.
- A tax credit is granted for the first 130 hours overworked by workers. The credit is computed on the basis of the “gross amount NOSS - National Office For Social Security” (i.e. before deduction of the personal social contributions) of the remunerations on which overtime pay has been calculated. The credit amounts to 57.75% where overtime pay is equal to 50% or 100%, and to 66.81% where overtime pay is equal to 20%.
- A tax credit of 69.48 euro is granted to employees whose taxable monthly remuneration does not exceed 2,038.70 euro.

G. Computation of monthly amount

The amount of tax thus obtained is then divided by 12 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.

*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 (euro)			Applicable rate of withholding tax on earned income %	
			Annual holiday pay	Other allowances
0.00	-	6,460.00	0.00	0.00
6,460.01	-	8,015.00	19.17	23.22
8,015.01	-	9,970.00	21.20	25.23
9,970.01	-	11,830.00	26.25	30.28
11,830.01	-	13,765.00	31.30	35.33
13,765.01	-	15,725.00	34.33	38.36
15,725.01	-	19,570.00	36.34	40.38
19,570.01	-	21,505.00	39.37	43.41
21,505.01	-	29,300.00	42.39	46.44
29,300.01	-	39,035.00	47.44	51.48
39,035.01	-	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	8,467
2	10,828
3	15,428
4	20,485
5	25,505
6	30,526
7	35,546

(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 13,000 euro, is exempted up to 20,485 euro - 13,000 euro = 7,485 euro.

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
1	7.5	19,480
2	20	19,480
3	35	21,425
4	55	25,820
5	75	27,270

(1) A disabled dependent child counts for two.

### 7.1.3. Salary arrears and redeployment allowances

The withholding tax on salary arrears and on redeployment allowances is calculated according to a "reference salary".

This corresponds in principle 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 (euro)		Rate of withholding tax in %
0.00	- 7,980.00	0.00
7,980.01	- 9,585.00	2.68
9,585.01	- 10,640.00	6.57
10,640.01	- 12,775.00	10.77
12,775.01	- 13,845.00	13.55
13,845.01	- 15,435.00	16.55
15,435.01	- 18,095.00	19.17
18,095.01	- 23,415.00	24.92
23,415.01	- 28,735.00	29.93
28,735.01	- 37,255.00	31.30
37,255.01	- 42,040.00	36.90
42,040.01	- 47,895.00	38.96
47,895.01	- 55,875.00	40.93
55,875.01	- 67,055.00	42.92
67,055.01	- 84,080.00	44.99
84,080.01	- 96,855.00	46.47
96,855.01	- 113,880.00	47.48
113,880.01	- and more	48.00

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 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 850 euro, they are treated as an ordinary monthly salary;
- when their gross amount exceeds 850 euro, 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. *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 method applicable to wage and salary earners, with the exception of three specific points:

- To allow these taxpayers to take account of the **social contributions for self-employed** and of the "minor risk" sickness insurance contributions, a reduction is applied on their gross income, which is calculated as follows:

*Table 7.8.  
Periodical remunerations of managers  
Reduced base of withholding tax*

Gross amount of monthly remuneration	Reduction	
	on lower limit	% above the limit
0 to 1,005	305.00	
1,005 to 4,330	305.00	23.0%
4,330 to 6,345	1,069.75	14.5%
6,345 and more	1,361.93	0.0%

- Deductible professional expenses are calculated at the single rate of 3% with a maximum of 2,150 euro.
- The tax credit for low- or middle-income company managers amounts to 69.48 euro per year and is granted where the taxable monthly remuneration does not exceed 1,948.14 euro.

#### 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.

### 7.1.6. 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 7.9.**  
*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 and more	37.35

### 7.1.7. Students

In derogation from all the provisions mentioned above, no withholding tax is due on remunerations paid or allocated to students with a written employment contract not exceeding 23 working days, either where these days are situated in the holiday period July-August-September or where they are situated, outside that period, when college attendance is not compulsory.

This tax exemption is granted only where, apart from the solidarity contribution, no social security contributions are due on the payments.

### 7.1.8. Young workers

No withholding tax is due on remunerations paid or allocated 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 25 November 1991 imposing regulations on unemployment), provided the work is carried out under the terms of an employment contract starting in October, November or December of the preceding year and provided the gross amount of the remunerations does not exceed 2,350 euro a month.

## 7.2. Exemptions of payment

The withholding tax on earned income, computed as described in paragraph 7.1., is in principle withheld by the employer and paid to the tax administration.

In some cases, the most important of which are commented upon below, the employer is entitled to an exemption of payment which has no impact on the amount withheld. The employer retains the exempted amount; as a result, the exemption works as a wage subsidy to the employer.

### 7.2.1. Structural reduction

The law of 17 May 2007 introduced an exemption of payment amounting to 0.25% of the gross remunerations. This exemption applies to the profit sector, the non-profit sector and autonomous public undertakings (the SNCB/NMBS Group, La Poste/De Post and Belgacom).

The rate of this exemption has been progressively increased and amounts to 1% as from 1 January 2010. This increase does not apply de facto to the non-profit sector because the additional exemption of payment has been replaced by a payment to the "Maribel Social" Funds.

### **7.2.2. Research workers**

A partial exemption of payment to the tax administration of withholding tax on earned income has been brought in with respect to remunerations paid to research workers. This exempted part that is deducted but not paid to the tax administration stays at the disposal of the employer. The research workers are allowed to set off that part (not paid to the tax administration) against their income tax liability in their tax return.

The payment to the tax administration of withholding tax on earned income is exempted to 75% for:

- universities and “hautes écoles” (non-university tertiary education), as well as for the “Federaal Fonds voor Wetenschappelijk Onderzoek – Fonds fédéral de la Recherche scientifique”, the “FRS-FNRS” (Fonds de la Recherche Scientifique – FNRS) and the “FWO-Vlaanderen” (Fonds voor Wetenschappelijk Onderzoek Vlaanderen);
- scientific institutions approved by royal decree;
- private companies employing research workers collaborating with all the above-mentioned institutions;
- companies employing research workers having either a PhD in Applied Sciences, Exact Sciences, Medicine, Veterinary Medicine or Pharmaceutical Sciences or Civil Engineering, or a Master or equivalent in fields of sciences (123). Those persons shall be working on R&D programs;
- remunerations paid by the “Young innovative companies”.

### **7.2.3. Team bonuses and night shift differentials**

Where companies’ work schedules include team work or night shifts, these companies enjoy a partial exemption of payment to the tax administration of the withholding tax on earned income that is normally deducted on the concerned workers’ remunerations.

However, the eligible companies shall withhold the entire normal amount of the withholding tax on earned income and on bonuses, and the workers are entitled to set off the same amount against their income tax liability in their tax return.

The part of the withholding tax on earned income not to be paid to the tax administration, has been set at 15.6% of the taxable remunerations, including team bonuses but excluding holiday allowances, end-of-year payments and salary arrears.

This exemption of payment has been extended to the following autonomous public undertakings: Belgacom, La Poste/De Post and companies from the SNCB/NMBS Group.

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123 A list of all Masters entitling to the exemption from withholding tax on earned income, can be found in article 275/3 §2, Income Tax Code 1992.

### **7.2.4. Overtime pay**

For the employees, the tax relief consists of a tax credit implemented in the calculation of the withholding tax on earned income and for their employers in the market sector or temping sector, the advantage consists of a partial exemption of payment to the tax administration of withholding tax on earned income. The tax relief has been extended to the following autonomous public undertakings: Belgacom, La Poste/De Post and companies from the SNCB/NMBS Group.

The exempted amount of withholding tax on earned income not to be paid to the tax administration amounts to:

- 32.19% of the gross amount (basic salary) of the remunerations paid for hours overworked to which an overtime pay of 20% applies;
- 41.25% of the gross amount of the remunerations for hours overworked to which an overtime pay of 50% or 100% applies.

This exemption applies to the first 130 hours overworked, per employee and per year.

### **7.2.5. Sportsmen**

Since 1 January 2008, a partial exemption of payment of withholding tax on earned income up to 80% has been granted for remunerations paid or granted by sporting clubs to sportsmen younger than 26.

Sporting clubs may also benefit the partial exemption of payment of withholding tax on earned income for sportsmen aged 26 or older, on the understanding that half of this exemption of payment is devoted, within a given period, to the training of young sportsmen. Amounts devoted to the training of young sportsmen cover the payment of trainers' and coaches' wages on the one hand, and of young sportsmen's wages on the other hand. As from 1 July 2010, at least the half of those amounts must be devoted to remunerations paid to persons training or coaching young sportsmen.

Another change came into force on 1 July 2010: remunerations earned by the sportsman as manager, no longer entitle to the partial exemption of payment of withholding tax on earned income.

## **7.3. Lump sum credit granted by the Flemish Region**

This credit is applicable to workers and company managers domiciled in one of the communes being part of the Flemish Region on 1 January 2010, it being understood that in case of change of domicile during the year in which the income has been earned, the one (natural person or company) liable to the withholding tax on earned income can take the new address into consideration as soon as he/it has been informed of the change.

It applies to the withholding tax on earned income computed after deduction of the professional expenses and after application of the common scale, the zero-rate band and the tax credits.

As far as employees are concerned, the credit amounts to 125 euro where the annual amount of the standard gross remuneration is between 6,980 euro and 20,765 euro.

As far as company managers are concerned, the credit amounts to 125 euro where the annual amount of the standard gross remuneration is between 5,675 euro and 19,075 euro.



#### 7.4. Advance payments (AP)

Traders, company managers, members of liberal professions and companies have to make advance payments in four quarterly instalments (12 April, 12 July, 11 October and 20 December) (124).

By paying these instalments, they prevent tax increases.

A dispensation of tax increase may be given, for the first three years of activity, when a self-employed person sets up a business for the first time as a principal activity.

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 (125).

For the income of the year 2010, the reference rate is 0.75%.

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

**Table 7.10.**  
***Increases and bonuses in respect of advance payments of the year 2010***

Increase		Bonus	
AP1	3.0%	AP1	1.50%
AP2	2.5%	AP2	1.25%
AP3	2.0%	AP3	1.00%
AP4	1.5%	AP4	0.75%

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124 These dates are valid for natural persons and for companies whose financial year coincides with the calendar year. For other companies, the dates for AP are calculated from the 1<sup>st</sup> day of the financial year. Where the date falls on a Saturday, Sunday or public holiday, the payment must be made on the first following working day.

125 See page 63 and following.



<p style="text-align: center;"><b>PART II</b></p> <p style="text-align: center;"><b>INDIRECT TAXATION</b></p>
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Value added tax			
Legal base	The Code of Value Added Tax (VAT Code) and the decrees issued for its implementation.		
Who sets	the tax rate	the tax base	reliefs
	Central authority	Central authority	Central authority
Beneficiary	European Union Central authority Communities Social security Others (*) Securitisation since 2006 (*) Part of the revenue to the 'Commission pour la régulation de l'électricité et du gaz / Commissie voor de Regulering van de Elektriciteit en het Gas' since 2005.		
Tax collector	Federal Public Service Finance		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue (*)
	23,497.8	7.0%	27.3%
(*) Total tax revenue levied by the Federal State and by the Flemish Region (for the withholding tax on real estate)			

Registration duties, mortgage duties and court fees			
Legal base	Code of Registration Duties, Mortgage Duties and Court Fees and the decrees issued for its implementation.		
Who sets	the tax rate		the tax base
	Central authority Regional authority	Central authority Regional authority	reliefs  Central authority Regional authority
Beneficiary	Central and regional authorities Regional authorities set the tax rate, tax base and reliefs and benefit from the revenue from most of registration duties.		
Tax collector	Usually professional intermediaries (notaries, ...) collect the duties and transfer the revenues to the federal tax administration.		
Tax revenue	2009 tax revenue in millions of euro		Tax revenue as % of GDP
	Registration duties	3,090.0	
	Mortgage duties	74.4	
	Court fees	33.5	
	Other revenues	442.9	
	<b>TOTAL</b>	<b>3,640.9</b>	1.1%
			Tax revenue as % of total tax revenue  4.2%

<b>Estate duties</b>			
Legal base	The Estate Duty Code and the decrees issued for its implementation.		
Who sets	the tax rate	the tax base	reliefs
	Regional authority	Regional authority	Regional authority
Beneficiary	Regional authority		
Tax collector	Federal Public Service Finance for all three regions.		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue
	2,030.1	0.6%	2.4%

<b>Miscellaneous duties and taxes</b>			
Legal base	These duties and taxes are regulated by the Code of miscellaneous duties and taxes (CMDT) and by the decrees issued for its implementation.		
Who sets	the tax rate	the tax base	reliefs
	Central authority	Central authority	Central authority
Beneficiary	Central authority Social security (*) Others (*)  (*) The federal authority is the beneficiary of most of the revenue. Since 2006 however, part of the insurance taxes is transferred to the social security institutions and the National Disaster Relief Fund ("Caisse nationale des Calamités / Nationale Kas voor Rampenschade").		
Tax collector	Federal Public Service Finance		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue
	1,500.7	0.4%	1.7%



<b>Customs procedures upon importation, exportation and transit</b>			
Legal base	These procedures are mainly based on the Community Customs Code and on the decrees issued for its implementation.		
Who sets	the tax rate	the tax base	reliefs
	European Union	European Union	European Union
Beneficiary	European Union		
Tax collector	Federal Public Service Finance		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue
	1,835.8	0.5%	2.1%

## Excise duties

Legal base	<p>These taxes are laid down and regulated by various EU directives and national legislation. A number of important provisions are included i.a. in:</p> <ul style="list-style-type: none"> <li>- the Law of June 10<sup>th</sup>, 1997, bearing general regulations for excise products, the holding, the movement, and the control thereof (BOJ of August 1<sup>st</sup>, 1997);</li> <li>- the Programme law of December 27<sup>th</sup>, 2004 (BOJ of December 31<sup>st</sup>, 2004);</li> <li>- the Law of January 7<sup>th</sup>, 1998, relating to the structure and excise tariffs on alcohol and alcoholic beverages (BOJ of February 4<sup>th</sup>, 1998);</li> <li>- the Law of April 3<sup>rd</sup>, 1997, relating to the fiscal regime of manufactured tobacco (BOJ of May 16<sup>th</sup>, 1997);</li> <li>- the Law of February 13<sup>th</sup>, 1995 relating to the excise system for non-alcoholic beverages (BOJ of March 11<sup>th</sup>, 1995);</li> <li>- the Law of February 13<sup>th</sup>, 1995, relating to the excise system of coffee (BOJ of March 11<sup>th</sup>, 1995);</li> </ul> <p>their modifications and the decrees issued for the implementation of these laws.</p>		
Who sets	the tax rate	the tax base	reliefs
	Central authority	Central authority	Central authority
Beneficiary	<p>Central authority</p> <ul style="list-style-type: none"> <li>- part of excise duties on tobacco to Social Security since 2003.</li> <li>- part of excise duties on energy products to the 'Commission pour la régulation de l'électricité et du gaz / Commissie voor de Regulering van de Elektriciteit en het Gas' since 2006.</li> </ul>		
Tax collector	Federal Public Service Finance, Customs and Excise Administration.		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue
	6,424.3	1.9%	7.5%

<b>Environmental taxes, the packaging charge and the environmental charge</b>			
Legal base	Environmental taxes, the packaging charge and the environmental charge are the object of art. 91-93 and 95, §4 of the special law of July 16 <sup>th</sup> , 1993 finalising the federal structure of the State (BOJ of July 20 <sup>th</sup> , 1993) and of Book III (articles 369-401 <i>bis</i> ) of the ordinary law of July 16 <sup>th</sup> , 1993 aimed at finalising the federal structures of the State (BOJ of July 20 <sup>th</sup> , 1993), the amendments thereof and the decrees issued for the implementations of the laws.		
Who sets	the tax rate	the tax base	reliefs
	Central authority	Central authority	Central authority
Beneficiary	Central authority - part of the packaging charge to Social Security since 2005.		
Tax collector	Federal Public Service Finance		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP	Tax revenue as % of total tax revenue
	322.7	0.1%	0.4%

Taxes assimilated to income taxes				
Legal base	These taxes are laid down and regulated by the Code of taxes assimilated to income taxes and by the decrees issued for its implementation.			
Who sets		the tax rate	the tax base	reliefs
	1. <i>Circulation tax</i> 2. <i>Tax on the entry into service</i> 3. <i>Eurosticker</i> 4. <i>Betting and gambling tax</i> 5. <i>Gaming machine licence duty</i>	Regional authority	Regional authority	Regional authority
	6. <i>Tax on the participation of employees in the benefit or the capital of the company</i>	Central authority	Central authority	Central authority
Beneficiary	1. <i>Circulation tax</i>	<p>Regional and local authorities</p> <p>Comment: Taxes on traffic are regional taxes whose administration is assumed by the central authority (see 'tax collector'). Since 2002 however, regional authorities benefit from all tax revenue except for the local surcharge.</p> <p><u>Surcharge in favour of the municipalities:</u></p> <p>This surcharge applies to all vehicles liable to the circulation tax, except:</p> <ul style="list-style-type: none"> <li>- unscheduled coaches (vehicles which exclusively transport people for a consideration by virtue of a license to supply unscheduled transportation);</li> <li>- vehicles for which an abatement of the circulation tax was granted for exclusive use within the confines of a port;</li> <li>- vehicles liable to the daily tax (vehicles used in Belgium with a foreign number plate).</li> </ul> <p>Where applicable, the additional circulation tax (ACT) must be added.</p>		
	2. <i>Tax on the entry</i>	Regional authority		

	<i>into service</i>	The central authority is responsible for the administration of the tax on the entry into service (see 'tax collector'). Since 2002 however, regional authorities benefit from all tax revenue. No surtaxes can be levied by local authorities.		
	3. <i>Eurosticker</i>	Since 2002, regional authorities benefit from all tax revenue.		
	4. <i>Betting and gambling tax</i>	Regional authorities benefit from all tax revenue.		
	5. <i>Gaming machine licence duty</i>	Regional authorities benefit from all tax revenue.		
	6. <i>Tax on the participation of employees in the benefit or the capital of the company</i>	Central authority and social security Since 2004, about half of the revenue collected is transferred to the National Office of Social Security.		
Tax collector	1. <i>Circulation tax</i> 2. <i>Tax on the entry into service</i> 3. <i>Eurosticker</i>	Federal Public Service Finance		
	4. <i>Betting and gambling tax</i> 5. <i>Gaming machine licence duty</i>	Until 2009, Federal Public Service Finance Since 2010: Federal Public Service Finance (for the Flemish Region and the Brussels-Capital Region) and Walloon Region		
	6. <i>Tax on the participation of employees in the benefit or the capital of the company</i>	Federal Public Service Finance		
Tax revenue	2009 tax revenue in millions of euro	Tax revenue as % of GDP		Tax revenue as % of total tax revenue
	2,062.0	0.6%		2.4%



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## CHAPTER ONE VALUE ADDED TAX (VAT)

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### *What is new?*

- *New system for the place of supply of services.*
- *Extension of the application of reduced rates to some activities regarding dwellings.*
- *Application of the 12%-rate to restaurant and catering services.*

*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 EU Member State (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 EU Member States (Art. 3*bis*).

### 1.2. Persons liable to VAT

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 8*bis* 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 considered as taxable persons for the activities or operations they carry on as public authorities (for these activities or operations, they are considered as non-taxable legal persons, see below). They are, however, liable to tax for these activities or operations where treatment as non-taxable persons would lead to distortions of competition of a certain extent (Art. 6).

As far as some activities or operations are concerned, and inasmuch as they are considerable, public authorities and public bodies are considered as taxable persons in any case. Those activities are for instance telecommunications services, water, gas and electricity supply, transport of goods and individuals, ports, waterways and airports exploitation, and some other activities.

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. 8*bis*).

"Means of transport" shall be taken to include: certain ships and aircraft, as well as motorised 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:

- **exempted 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, etc.) and certain holding companies.

### 1.3. Taxable transactions

Taxable activities include the following four major categories:

- supplies of goods (Art. 9 to 17);
- supplies of services (Art. 18 to 22);
- importations (Art. 23 to 25);
- intra-Community acquisitions of goods (Art. 25*bis* to 25*septies*).



### 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 EU Member State 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 EU Member State to Belgium (system of remote sales - Art.15, § 4) and if the supply of the goods is carried out for:

- a taxable person benefiting the exemption system (see point 1.9.1) or the flat-rate system for agricultural enterprises (see point 1.9.2), a taxable person effecting exclusively supplies of goods or services non-eligible for the deduction (see point 1.4.2) or a non-taxable legal person, who are exempted for the intra-Community acquisition in Belgium of these goods (up to the exempted amount of 11,200 euro, excluding VAT, see below);
- any other non-taxable person.

For the supply of goods *other than excise goods* (viz. energy products (except for gas supplied by the natural gas supply system and electricity), alcohol and alcoholic beverages, as well as manufactured tobacco) **for a total amount per calendar-year not exceeding 35,000 euro** (excluding VAT), the place of supply shall be in this case Belgium only if the supplier (for example, a mail-order selling firm established in another EU Member State) **chooses to be taxed in Belgium**.

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. 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).

As far as the **place where a service is supplied** (Art. 21 to 21*ter*) is concerned, a distinction must be made according to the customer's status.

a) Where the customer is *a taxable person, a hybrid taxable person or a non-taxable legal person identified for VAT purposes*, the place of supply of the service is the place where the customer has established his business or the place where he has a fixed establishment from which the service is supplied.

There are some exceptions to that rule (Art. 21), for example: the place where the immovable property is located for services relating to immovable property by nature; for passengers transport: the place where the transport takes place, proportionate to the distances covered; the place where the event or activity actually takes place (granting access to some events, activities and services linked to these events or activities); the place where the service is physically supplied (restaurant and catering services, with some exceptions); the place where the means of transport is actually put at the customer's disposal (short-term hiring); the place of departure of the passengers transport (restaurant and catering services on board ships, aircrafts or trains during the section of the transport within the European Union).

b) Where the customer is another *non-taxable person* than those above-mentioned sub. a), the place of supply of the service is the place where the supplier has established his business or the place where he has a fixed establishment from which the service is supplied.

There are also a lot of exceptions to that rule (Art. 21*bis*), for example: the place where the immovable property is located for services relating to immovable property by nature; for passengers transport: the place where the transport takes place, proportionate to the distances covered; for transport of goods with the exception of intra-Community transport: the place where the transport takes place, proportionate to the distances covered (for intra-Community transport: the place of departure is taken into consideration); the place where the event or activity actually takes place (granting access to some events, activities and services linked to these events or activities); the place where the service is physically supplied (restaurant and catering services, with some exceptions; ancillary transport services; valuations of and work on movable property); the place where the means of transport is actually put at the customer's disposal (short-term hiring); the place of departure of the passengers transport (restaurant and catering services on

board ships, aircrafts or trains during the section of the transport within the European Union); the place where the customer is established (for electronically services supplied to a customer established in Belgium by a taxable person established outside the European Union and for services supplied to a customer established outside the European Union and relating to advertising, to the services of consultants, lawyers, accountants, etc., to banking, financial and insurance transactions, to the supply of staff, to the hiring out of movable property (with the exception of the means of transport), to the provision of access to, and of transport or transmission through, gas and electricity distribution systems, to telecommunications, radio and television broadcasting services, to electronically supplied services, etc.); in Belgium for some telecommunication, radio and television broadcasting services supplied by a taxable person established outside the European Union to a customer established in Belgium, 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 euro** (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 exempted 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 in Belgium 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 and supplies of goods placed in Belgium 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);
- supplies of goods and services which take place in another Member State and are exempted in this Member State as a result of national provisions transposing the VAT Directive;
- 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 sea-going ships and vessels, commercial inland waterway vessels, 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 organisations;
- the deliveries of gold to central banks.

### 1.4.2. Other exemptions

The description of these exempted services is given in Art. 44 and 44*bis*.

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 related to social work, social security or protection of children and young people, where provided by public bodies or other registered social establishments (e.g. care of the elderly, childcare, care of the disabled, home help, health insurance funds, etc.);
- services provided by certain sports establishments;
- services provided by recognised 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 31<sup>st</sup> 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, the supply of immovable property by nature made available for operating ports, waterways and airports, 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. 44*bis*.

### 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 (where the basis is, in principle, the *normal value* - 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).

The standard VAT rate amounts to 21%.

Besides a whole series of exceptions and special cases, the reduced VAT rates are the following:

6%: for the goods and services listed in table A of the Annex to Royal Decree No 20 of July 20<sup>th</sup>, 1970, establishing VAT rates and the classification of goods and services under these rates. This rate is not applied where the services listed in table A are incidentally part of a complex agreement which relates essentially to other services.

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;
- social housing (by social housing agencies);
- demolition and rebuilding of dwellings in urban territories;
- and a few other services.

Temporarily from January 1<sup>st</sup>, 2000 to December 31<sup>st</sup>, 2010 (Art. 1bis and 1ter RD No 20)

The 6% rate temporarily applies 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 RD No 20);
- repair of bicycles;
- repair of footwear and leather-ware;
- repair and remodelling of articles of clothing and household linen.

Temporarily from January 1<sup>st</sup>, 2009 to December 31<sup>st</sup>, 2010 (Art. 1quater to 1sexies RD No 20)

The 6% rate temporarily applies to:

- demolition and reconstruction of buildings (dwellings) on the whole Belgian territory (see Art. 1quater RD No 20);
- work on real property and certain other performances in connection with the building of private dwelling, in which the developer will be domiciled without delay, on a cumulated global tax basis of 50,000 euro excl. VAT (under certain conditions – see Art. 1quinquies §1 RD No 20);
- supplies of private dwellings and certain other performances in connection with this kind of housing, in which the buyer will be domiciled without delay, on a cumulated global tax basis of 50,000 euro excl. VAT (under certain conditions – see Art. 1quinquies §2 RD No 20);
- certain social housings which are in principle taxed at 12% (see below and see Art. 1sexies RD No 20).

*In all these cases, the application for the urban planning permit relating to this kind of work must be filed before 1 April 2010.*

**12%:** for the goods and services listed in table B of the Annex of the above mentioned Royal Decree No 20. We are concerned here mainly with restaurant and catering services (with the exception of the supply of drinks), plant-protection products, margarine, tyres and tubes for wheels of agricultural machines and tractors, certain solid fuels (i.e. coal, brown coal and coke), pay television and social housing (i.e. by a public social assistance centre).

A 0% rate applies to newspapers and some weekly publications.



### 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, *1<sup>ter</sup>* and *1<sup>quater</sup>*).

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, §1*bis* and Art. 39*bis*). 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 "hybrid taxable persons", 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 euro (excl. VAT) 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. 53*quinquies*). In respect of intra-Community supplies and the services for which the VAT must be paid by the customer, an intra-community list must be monthly submitted (Art. 53*sexies*). Under certain conditions, this intra-Community list can be drawn up per quarter.

Taxable persons whose turnover does not exceed 1,000,000 euro (excl. VAT) 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 euro in respect of their supplies of mineral oils, mobile telephone equipment, computers with their peripherals, accessories and components, and motorised 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.

Taxable persons submitting a monthly VAT return, must send the return and both above-mentioned lists online. However, they are exempted from this obligation as long as they have no computer at their disposal to fulfil this obligation. The above-mentioned rules apply to taxable persons submitting a quarterly VAT return as from April 1<sup>st</sup>, 2009 for the return and as from July 1<sup>st</sup>, 2009 for the above-mentioned lists.

### **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 euro (excl. VAT) 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 euro (excl. VAT). They are not entitled, however, to deduct the VAT on their purchases. This exemption system does neither 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 euro (excl. VAT). 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 euro (excl. VAT) a 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.

## CHAPTER TWO

### REGISTRATION DUTIES, MORTGAGE DUTIES AND COURT FEES

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#### *What is new?*

- *In the Flemish Region: the application of the reduced rate of donation duty to lands has been extended up to 31 December 2011.*
- *In the Walloon Region: as far as donation duties are concerned, abolishment of the minimum time period of legal cohabitation; introduction of a specific fixed duty of 10 euro for termination of certain conventions; exclusion of certain costs when determining registration duties on the sale of immovable property, and donation duties.*

*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 or on any other data medium determined by RD.

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 exempted from the registration formality, but this exemption shall not entail the relief from duties applicable to these deeds. Deeds of protest, for instance, are exempted 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; leases, underleases or assignment of leases relating to real estate or parts of real estate which are located in Belgium and intended to be exclusively a single person or single family lodging – see art. 161 of the Code), the registration duties 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 and expenses. However, in the *Walloon Region*, expenses regarding studies relating to investigation costs on polluted or potentially polluted grounds and to drainage deeds or work, are not taken into consideration in the tax base. This taxable value cannot, however, be lower than the market value of the property as of the day of the agreement. Except for the Brussels-Capital Region, 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 *Walloon Region*, the duty amounts however to 10% where a mortgage loan is granted, in the framework of the sale, to the buyer by the “*Société wallonne du Crédit social*”, the “*Guichets du Crédit social*” or the “*Fonds du Logement des Familles nombreuses de Wallonie*”. If the 6% duty applies, it is reduced to 5% in the aforesaid cases.

In the *Flemish Region*, the tax base can, under certain conditions, be diminished by 15,000 euro 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). If a mortgage is created on the acquired real estate in order to finance this acquisition (building, planning or renovation works), this abatement is increased, under certain conditions, by 10,000 euro where the 10% duty applies and by 20,000 euro where the 5% duty applies. 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 euro). The abatement can’t combine with the conveyability in the form of a deduction.

In the *Brussels-Capital Region*, the tax base is, under certain conditions, reduced by 60,000 euro 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 75,000 euro 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 Brussels-Capital Region.

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) located in Belgium which is used exclusively for the accommodation of a family or a single person, the registration duties for the contracts are nil.

#### C. Contribution of assets to Belgian companies

The registration duty on the contribution of assets to Belgian companies was reduced to nil as from January 1<sup>st</sup>, 2006 by the Act of June 22<sup>nd</sup>, 2005 (BOJ June 30<sup>th</sup>, 2005, first edition) introducing a tax allowance for corporate equity.

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 registration duty on the increase in statutory capital of a Belgian company, without contribution of new assets, was reduced to nil as from January 1<sup>st</sup>, 2006 by the Act of June 22<sup>nd</sup>, 2005 (BOJ June 30<sup>th</sup>, 2005, first edition) introducing a tax allowance for corporate equity.

#### 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.

In the *Walloon Region*, the duty is reduced to 0% if the mortgage secures a loan granted by the "Société wallonne du Crédit social", the "Guichets du Crédit social" or the "Fonds du Logement des Familles nombreuses de Wallonie".

#### 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. In the *Walloon Region*, expenses resulting from investigation and draining requirements on polluted or potentially polluted grounds, including demolition and restoration costs linked to this draining operation, are deducted.

The rate 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 euro		Tax rates in %
From	Up to (and including)	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 euro		Tax rate in %		
from	Up to (and including)	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>, 2006 and December 31<sup>st</sup>, 2011 are concerned.

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

Portion of value of the gift in euro		Tax rate in %
From	Up to (and including)	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 euro		Tax rate in %		
From	Up to (and including)	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. 140*bis* to 140*quinquies* 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 the general regime and the conditional regime applying to donations of movable property, dwellings or undertakings.

In the general regime, 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 between lineal relatives, between spouses and between legal cohabitants – General regime**

Portion of value of the gift in euro		Tax rates in %
From	Up to (and including)	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 between collaterals and between non-relatives General regime**

Portion of value of the gift in euro		Tax rate in %		
From	Up to (and including)	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	80

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

“Spouses” and “legal cohabitants” are defined as follows:

- “spouse” means the person who, on the date of the donation, was married to the grantor, in accordance with the provisions of Book I, Title V, of the Civil Code, and the person who, on the date of the donation, was married to the grantor, in accordance with Chapter III of the law on international private law;

- “legal cohabitant” means the person who, on the date of the donation, was domiciled and legally cohabiting with the grantor, in accordance with the provisions of Book III, Title *Vbis*, of the Civil Code, and the person who, on the date of the donation, was domiciled with the grantor or had his/her habitual residence with the grantor, within the meaning of Article 4 of the law on international private law, and was living together with the grantor, in accordance with Chapter IV of the same law.

Under certain conditions, donations of *movable property* are liable to the following proportional rates on the gross part of each of the donees:

- 3% on donations between lineal relatives, between spouses or between legal cohabitants;
- 5% on donations between brothers and sisters or between uncles/aunts and nephews/nieces;
- 7% on donations between other persons.

The rates of Table III may apply to donations of *dwellings*, but this preferential rate only applies where:

- it is a donation, between lineal relatives, spouses or legal cohabitants, of a ‘dwelling’, i.e. (a portion of) a real estate that is in the unrestricted ownership of the donor and is intended to be used wholly or partly as a dwelling;
- this dwelling is situated in the Walloon Region and;
- it has been, in principle, the donor’s main residence for at least five years at the time of the donation.

**TABLE III - Donations of dwellings between lineal relatives, spouses or legal cohabitants**

Portion of value of the gift in euro		Tax rates in %
from	Up to (and including)	Lineal, between spouses and between legal cohabitants
0.01	25,000	1
25,000	50,000	2
50,000	175,000	5
175,000	250,000	12
250,000	500,000	24
above	500,000	30

A 12,500 euro tax exemption is granted (25,000 euro if the donee’s gross portion does not exceed 125,000 euro), this exemption being set off preferentially against the successive brackets of the gift, starting with the lowest. The value relating to the possible professional share of the immovable property entitling to the rate applied to donations of businesses (see below), is not taken into account when determining the taxable share.

As regards certain donations of *businesses* and donations of property rights on shares or securities of certain companies, they are liable, subject to certain conditions, to a **0%** duty. This rate does not apply to immovable property used partially or wholly as a dwelling. Conditions and implementations are described in art. 140*bis* to 140*octies* of the Code, such as applicable to the Walloon Region.

In the Walloon Region, are exempted from donation duties, under certain conditions:

- the value of growing trees in woodlands and forests;
- the value of stocks and shares of forestry groups, inasmuch as this value relates to growing trees in woodlands and forests.

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

In the Brussels-Capital Region, a distinction is made between donations of immovable property, donations of movable property, donations of dwellings and donations of 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 to IV hereafter.

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

Portion of value of the gift in euro		Tax rates in %
from	Up to (and including)	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 immovable property between brothers and sisters**

Portion of value of the gift in euro		Tax rate in %
from	Up to (and 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
above	250,000	65

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

Portion of value of the donation in euro		Tax rate in %
from	Up to (and including)	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 immovable property between any other persons**

Portion of value of the donation in euro		Tax rate in %
from	Up to (and including)	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 *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 or cohabitants, 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).

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 Brussels-Capital Region.

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. 131*bis* of the Code, such as it is applicable to the Brussels-Capital Region).

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

Portion of value of the donation in euro		Tax rate in %
From	Up to (and including)	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, on the basis of the above-mentioned tables, 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. 140*bis* to 140*octies* of the Code, such as applicable to the Brussels-Capital Region.

#### 4. REDUCED DONATION DUTIES OWING TO DEPENDENTS

In the Walloon Region and in the Brussels-Capital Region, 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 euro;
- the permission to change one's first name (490 euro, with possible reduction to 49 euro), the permission to change one's family name (49 euro) or the permission to add another name or a particle to a name or to substitute a small letter for a capital letter (740 euro, with possible reduction to 49 euro);
- the total or partial discharge of mortgage taken out in Belgium: 75 euro;
- in the Flemish Region, the amicable rescission or cancellation of pre-contracts: 10 euro;
- in the Walloon Region, some conventions relating to rescission of sales, sharings, donations and some other deeds, notably terminated conventions: 10 euro.

##### **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 euro**.

## 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 principal and accessories of sums for which the registration is contracted or renewed (with a minimum) of 5 euro. Certain types of registration (notably those payable by the State) are exempted 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 the case and which are levied either per operation or per 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?*

*In the Walloon Region: deduction of debts relating to immovable property liable to transfer duty upon death; abolishment of the minimum time period of legal cohabitation.*

*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. In the Walloon Region, debts specially relating to this property are, however, deducted. In the Flemish Region, debts specifically contracted to acquire or maintain this property are deductible if the deceased was an inhabitant of the E.E.A. 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).

## ESTATE DUTIES

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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 (126) 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 euro		Tax rates in %
From	Up to (and including)	Upon lineal relatives and between spouses
0.01	50,000	3
50,000	250,000	9
More than	250,000	27

The assignees' net share (spouse or cohabitant) in the real estate being the dwelling house at the time of the decease, is no longer taken into account for calculating the taxable net share. However, this exemption does not apply to the cohabitant who is either a testator's lineal assignee or assimilated to a lineal assignee.

"Cohabitant" means:

- 1° the person who, at the date the inheritance is opened, in line with the terms of Book III, Title *Vbis* 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 (three years for the exemption of the net share in the dwelling house). 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 (or three years) and the testator's death. A certificate of residence holds a refutable assumption of uninterrupted cohabitation and shared household.

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126 Exceptions: as regards inheritances opened in the Flemish Region or in the Brussels-Capital Region: 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*).

178 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.  
July 2010 issue.

An inheritance between a stepparent and a stepchild is assimilated to an inheritance between lineal relatives. The same assimilation applies to the inheritance between the child of someone cohabiting with the deceased and the deceased, and to an inheritance between the person cohabiting with one of the deceased's relatives and the deceased. In this last assimilation case, the condition that the legatee must cohabit with one of the deceased's relatives is met, where the legatee was cohabiting with this relative at the time of death, in accordance with the provisions of Book III, Title *Vbis* of the Civil Code, or where he can prove by any means except for the oath that, at the time of death, he was continuously living together with the deceased as a single household for one year.

An inheritance between divorced or legally separated persons and an inheritance between ex-cohabitants are only assimilated to an inheritance between spouses or cohabitants if there are common descendants. In order to benefit the assimilation, the ex-cohabiting legatee must prove that he cohabited with the deceased in accordance with the provisions of Book III, Title *Vbis* of the Civil Code or if he can prove by any means except for the oath that, at the time of death, he was continuously living together with the deceased as a single household for one year.

An inheritance between persons who have or had a parent/non-biological child relationship is assimilated to an inheritance between lineal relatives. Within the meaning of the present provision, such a relationship is supposed to exist or to have existed where someone, aged less than 21, has continuously cohabited for three years with someone else and has received during this period from principally this person or this person and his/her spouse assistance and care which are usually provided to children by their parents. The registration of the non-biological child in the population register or in the register of aliens at the non-biological parent's address, is a rebuttable presumption of the cohabitation with the non-biological parent.

**TABLE II - Inheritances between brothers and sisters or between "others" (127)**

Bracket of taxable amount in euro		Tax rates in %	
From	Up to (and including)	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" means:

- 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.

127 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).

### 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 (128).
2. The lineal heirs and the surviving spouse or cohabitant are entitled to a tax reduction, which is degressive and shall not exceed 500 euro. No reduction shall be allowed for net shares exceeding 50,000 euro. For net shares up to 50,000 euro, the reduction amounts to 500 euro x (1 – net share/50,000). The net share in the dwelling house is not taken into account for calculating the total net share.
3. The testator's brothers and sisters are also entitled to a tax reduction on their net share, inasmuch as it does not exceed 75,000 euro. If the net share does not exceed 18,750 euro, the reduction amounts to 2,000 euro x net share/20,000. If the net share exceeds 18,750 euro but does not exceed 75,000 euro, the reduction amounts to 2,500 euro x (1 – net share/75,000).
4. All other heirs who are neither lineal heirs nor spouses or cohabitants, brothers or sisters are entitled to a tax reduction, provided the **sum** of their net shares does not exceed 75,000 euro. That reduction is apportioned between the heirs in proportion to their net share of the inheritance. Where the aggregate of the net shares does not exceed 12,500 euro, the reduction amounts to 2,000 euro x ([aggregate of the net shares]/12,500). Where the aggregate exceeds 12,500 euro but does not exceed 75,000 euro, the reduction amounts to 2,400 euro x (1 - [aggregate of the net 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 reduction applies, on the understanding that the "gross" share is, as appropriate, taken into consideration for the computation of the duties.
7. There is a 75 euro 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 is their amount, and they come on top of the reduction the children are entitled to on behalf of 2 and 6 above.

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128 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 net share of the inheritance that devolves to each of them.

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 euro, 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 euro, 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 recognised by the Flemish government in the framework of the financing and constructing of services providing apartment buildings or residential complexes are exempted from inheritance tax. To be entitled to this exemption, several conditions must be met, which are enumerated in art. 55*bis* of the Estate Duty Code, applicable in the Flemish Region, and in the relevant implementing orders by the Flemish government (Decree of December 21<sup>st</sup>, 1994, providing regulations for the execution of the 1995 budget, modified by the Decree of December 20<sup>th</sup>, 1996, providing regulations for the implementation of the 1997 budget, and the Order of May 3<sup>rd</sup>, 1995, providing exemptions in respect to inheritance tax in connection with social rights in companies established in the framework of the realisation and/or financing of investment programs in respect of service flats, amended by the Order of October 10<sup>th</sup>, 1995, by the Order of December 3<sup>rd</sup>, 1996, by the Order of February 23<sup>rd</sup>, 1999, by the Order of December 13<sup>th</sup>, 2002 en by the Order of March 2<sup>nd</sup>, 2007).
10. Assets and shares of family businesses or family companies are exempted 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. 60*bis* of the Estate Duty Code, applicable in the Flemish Region.
11. Under certain circumstances (see art. 55*ter* and 55*quater* 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 exempted 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 euro		Tax rates in %
From	Up to (and including)	Upon lineal relatives and between spouses and 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
More than	500,000	30

“Spouses” and “legal cohabitants” are defined as follows:

- the “spouse” is the person who, on the date the inheritance was opened, was married with the deceased, in accordance with the provisions of Book I, Title V of the Civil Code, and the person who, on the date the inheritance was opened, was married with the deceased, in accordance with Chapter III of the law on private international law.
- the “legal cohabitant” is the person who, on the date the inheritance was opened, was domiciled with the deceased and was legally cohabiting with the deceased, in accordance with the provisions of Book III, Title *Vbis* of the Civil Code, and the person who, on the date the inheritance was opened, was domiciled with the deceased or had his/her habitual residence with the deceased, within the meaning of Article 4 of the law on private international law, and was living together with the deceased in accordance with Chapter IV of the abovementioned law.

This tax rate is not applicable where the spouses are divorced or legally separated or where the legal cohabitants submitted a declaration of termination of legal cohabitation in accordance with Article 1476 of the Civil Code, and have no common children or descendants.

**TABLE II - Inheritances between collateral relatives and between non-relatives**

Bracket of the net share in euro		Tax rate in %		
From	Up to (and including)	Between brothers and sisters	Between uncles or aunts and nephews or nieces	Between all other persons
0.01	12,500	20	25	30
12,500	25,000	25	30	35
25,000	75,000	35	40	60
75,000	175,000	50	55	80
More than	175,000	65	70	80 (*)

(\*) *In its judgment of 22.06.2005, the Court of Arbitration, now called Constitutional Court, has invalidated article 1 of the decree of the Walloon Region dated 22.10.2003 insofar as it fixes a tax rate exceeding 80% for the 'more than 175,000 euro' bracket.*

Remarks:

1. No inheritance tax is due on any inheritance of which the net assets do not exceed 620 euro.
2. The lineal heirs, the surviving spouse or legal cohabitant are entitled to an exemption of 12,500 euro, which means there is no liability to inheritance tax for the first 12,500 euro bracket. Moreover, where the net portion inherited by the beneficiary does not exceed 125,000 euro, this abatement is extended to the second bracket (12,500 euro – 25,000 euro). The abatement is increased, in favour of each of the children under 21, by 2,500 euro 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 preferentially to the successive brackets of the net portion of the immovable property liable to the specific rate for dwellings (see point 5 below), starting with the lowest bracket. The rest, if any, will be imputed to the successive brackets of the net portion in other property liable to estate duties, starting with the lowest bracket of the latter rate actually applicable to abovementioned other property, after application of the progressive nature of the specific rate for dwellings (see point 5 below).
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 0% rate, provided certain conditions are met. In order to obtain this advantage and to maintain it, several conditions must be met, which are enumerated in art. 60*bis* of the Estate Duty Code, applicable in the Walloon Region. This rate does not apply to conveyances of rights *in rem* related to immovable property used wholly or partly as a dwelling at the time of the decease.
5. Where inheritances between lineal relatives, between spouses or between legal cohabitants hold at least a part in full ownership of the real property having been the testator's main residence for at least five years before his death, the estate duty on the net worth of that part is, after deduction, as appropriate, of the value relating to the professional share of the real property entitling to the application of the 0% rate, as mentioned in point 4 above, under certain circumstances levied according to the rates of Table III hereafter (see art. 60*ter* of the Estate Duty Code applicable in the Walloon Region).

**TABLE III - Inheritances of dwellings between lineal relatives, spouses or legal cohabitants (preferential rate)**

Brackets of the net share (euro)		Tax rate in %
from	Up to (and including)	Between lineal relatives, between spouses and between legal cohabitants
0.01	25,000	1
25,000	50,000	2
50,000	175,000	5
175,000	250,000	12
250,000	500,000	24
More than	500,000	30

In order to determine the progressive inheritance tax applying to the inheritance, the tax base of the inheritance entitled to this preferential rate is added to the remainder of the heir's share (see art. 66 of the Inheritance Tax Code applicable to the Walloon Region).

6. If, within a year of the death of the deceased, the goods which received through inheritance are transferred anew through death, the inheritance tax on this second transfer is reduced.
7. In the Walloon Region, are exempted from estate duties, under certain conditions:
  - the value of growing trees in woodlands and forests;
  - the value of stocks and shares of forestry groups, inasmuch as this value relates to growing trees in woodlands and forests.

**C. Inheritances opened in the Brussels-Capital Region**

**TABLE I - Inheritances between lineal relatives, between spouses and between cohabitants**

Tax brackets in euro		Tax rate in %
From	Up to (and including)	Upon lineal relatives, 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
More than	500,000	30

A "cohabitant" is a person being in a situation of legal cohabitation, as defined in Book III, Title *Vbis* of the Civil Code.



For the application of the tax rate between lineal relatives, is assimilated to a descendant of the deceased a child who is not a deceased's descendant provided that this child, when he was less than 21, has continuously cohabited for six years with the deceased and has received during this period from the deceased or from the deceased and his/her spouse or cohabitant, assistance and care which are usually provided to children by their parents. The registration of the child in the population register or in the register of aliens at the deceased's address presumes, unless evidence to the contrary is provided, the cohabitation with the deceased. For the application of the same tax rate, is assimilated to the deceased's father or mother the person who provided the deceased, under the same conditions, abovementioned assistance and care.

The tax rate of the duties between spouses and between cohabitants does not apply, as appropriate, where the spouses are divorced or legally separated or where the legal cohabitation ceased to exist, unless the spouses or the cohabitants have common children or descendants.

**TABLE II - Inheritances between brothers and sisters**

Tax brackets in euro		Tax rate in %
From	Up to (and 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**

Tax brackets in euro		Tax rate in %
From	Up to (and 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**

Tax brackets in euro		Tax rate in %
From	Up to (and 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 euro.
2. The lineal heirs, the surviving spouse or legal cohabitant are entitled to an exemption of 15,000 euro, which means there is no liability to inheritance tax for the first 15,000 euro bracket. The abatement is increased, in favour of each of the children under 21, by 2,500 euro for each whole year remaining until they reach the age of 21 (additional abatement) and also, in favour of the surviving spouse or legal cohabitant, by half the total amount of the additional abatements to which the common children are entitled.
3. A reduction of the inheritance tax and of the transfer duty upon death is granted to each heir, legatee or donee of whom, at the opening of the succession, at least three children were alive and under 21.
4. Assets and shares of certain 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. 60*bis* of the Estate Duty Code, applicable in the Brussels-Capital 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. 66*ter*, applicable in the Brussels-Capital Region).
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. 60*ter* of the Inheritance Tax Code applicable to the Brussels-Capital Region), liable to inheritance tax according to the Table I rates, with the following adjustments:
  - 0.01 euro to 50,000 euro bracket: 2% instead of 3%
  - 50,000 euro to 100,000 euro bracket: 5.3% instead of 8%
  - 100,000 euro to 175,000 euro bracket: 6% instead of 9%
  - 175,000 euro to 250,000 euro 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 Brussels-Capital Region);

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 euro.

### 3.3. The annual tax on unit trusts, credit companies and insurance companies

Investment institutions and companies for the management of investment institutions, undertakings for collective investment under foreign law, 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 exempted 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 recognised by the National Council of Co-operation) (Art. 161*bis* of the Code).

The tax rate is **0.08%**. Inasmuch as the investment company has attracted capital from institutional and professional investors, the rate is reduced to **0.01%** (Art. 161*ter* of the Code).

### 3.4. The annual tax on Coordination centres

Coordination centres are liable to this tax on the 1<sup>st</sup> January of each year. The tax amounts to **10,000 euro** per fulltime worker who is employed there on the 1<sup>st</sup> January of each year. The total amount of the tax chargeable to one and the same Coordination centre shall not exceed 100,000 euro.



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## CHAPTER FOUR MISCELLANEOUS DUTIES AND TAXES

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### *What is new?*

*Exemption from the tax on insurance transactions for credit insurance contracts against commercial risks and/or country risks.*

*These duties and taxes are laid down and regulated by the Code of miscellaneous duties and taxes (CMDT) and by the decrees issued for its implementation.*

#### **4.1. Duties on written documents**

A duty is levied, according to the tariffs mentioned below, on the following deeds and written documents, as far as they are drawn up in Belgium:

##### **4.1.1. Deeds drawn up by notaries**

There are three tariffs (art. 3-5 CMDT):

- \* 50 euro: standard tariff;
- \* 95 euro: for deeds drawn up for companies which are legal persons;
- \* 7.50 euro: for death certificates, deeds relating to the matrimonial property regime or the property regime for legal cohabitants, inheritances, donations inter vivos, wills and gifts, divorce and paternity and legal recognition.

##### **4.1.2. Deeds drawn up by bailiffs**

There are two tariffs (art. 6-7 CMDT):

- \* 50 euro: for records relating to public sales of tangible movable assets;
- \* 7.50 euro: for records relating to public sales of tangible movable assets resulting from an enforced debt redemption.

##### **4.1.3. Written bank documents**

A duty of 0.15 euro is levied on some written bank documents (art. 8 CMDT):

For instance, on some loan or credit facility agreements, agreements regarding a commitment, acknowledgment or guarantee in favour of bankers (art. 8, 1°, CMDT), security remittance or deposit receipts, some statements of account, receipts relating to securities placed in safe custody so that the scripholder can attend a shareholders' or a bondholders' meeting, etc. (art. 8, 2° to 4°, CMDT).

### **4.1.4. Other written documents**

There are two tariffs (art. 9-10 CMDT):

- \* 5 euro: e.g. for enforced recovery of sums by public authorities, records relating to public sales of tangible movable assets (apart from those drawn up by notaries and bailiffs) and some documents relating to patents;
- \* 2 euro: for some written documents delivered by the recorders of mortgages.

When the same deeds, by virtue of articles 3 to 7, are subject to different tariffs, only the highest shall be paid.

The deeds and written documents priced by articles 3 to 7, 8, 1°, 9 and 10 are subject to duty as and when they are drawn up and signed by the person or one of the persons who deliver them. The deeds and written documents priced by articles, 8, 2° to 4 are subject to duty as and when they are drawn up by the persons who deliver them.

### **4.1.5. Exemptions**

A whole series of exemptions are provided, notably for deeds and written documents concerning the execution of tax laws, laws relating to town and country planning, the creation of the Crossroads Bank for Enterprises, the total or partial discharge of mortgage taken out in Belgium, etc. (art. 21 CMDT).

## **4.2. Tax on stock-exchange and carry-over transactions**

### **4.2.1. Tax on stock-exchange transactions**

The following are liable to the tax (Art. 120 of the CMDT):

- 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 *capitalisation* shares (this also applies in the case of conversions in capitalisation 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> CMDT), 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, institutions for occupational retirement provision, undertakings for collective investment and non-residents, for transactions concerning participation rights in an institutional or private undertaking for collective investment, for transactions concerning treasury bonds or linear bonds issued by the State, 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 CMDT):

- 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 capitalisation shares: is the net inventory value of the shares, without deduction of the flat-rate compensation;
- for repurchases of capitalisation shares by collective investment undertakings with European authorisation and by collective investment undertakings established outside the European Community: is the inventory value of the shares, without deduction of the flat rate compensation, but minus the withheld withholding tax on income from movable property.

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 capitalisation shares*, the tax is due solely in respect of the transfer of the shares to the investment company (Art. 122 CMDT).

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

- a. **1.70 per thousand**: normal rate;
- b. **0.70 per thousand**: notably for securities of the public debt of the Belgian State or foreign States; loans issued by the Communities, the Regions, the provinces and the municipalities (both national and foreign); company bonds; participating interests in investment funds; shares issued by investment companies, etc.

However, the rate is **0.50%** for all sales and purchases of capitalisation shares of an investment company and for the repurchase by an investment company of its own capitalisation shares (see 2° above).

The amount of the tax may not exceed 500 euro per transaction, except in respect of transactions concerning capitalisation shares, for which the maximum amount has been set at 750 euro (Art. 124 CMDT).

#### **4.2.2. 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 CMDT).

The rate amounts to **0.85 per thousand** (Art. 138 CMDT).

The tax is payable by both parties. It is not due, however, by financial intermediaries, insurance companies, institutions for occupational retirement provision, undertakings for collective investments and non-residents (Art. 139 CMDT).

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 organisations, 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 CMDT).

### 4.3. 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 CMDT).

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

The tax is calculated (Art. 161 CMDT):

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 CMDT) 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;
- 4° deliveries of securities to institutions for occupational retirement provision.



#### 4.4. Annual tax on insurance transactions

This tax is levied on insurance contracts when the risk is located in Belgium (Art. 173 CMDT).

The risk of the insurance transaction is located in Belgium when one of the following conditions is fulfilled:

- the policyholder has his habitual residence in Belgium;
- if the policyholder is a legal person: the contract relates to the establishment of the legal person situated in Belgium;
- the contract relates to immovable or certain movable property situated in Belgium;
- the contract relates to vehicles of any type registered in Belgium;
- the insurance policy relating to the risks incurred when travelling or being on holiday, is issued in Belgium for maximum four months.

Various contracts are exempted from this tax, notably credit insurance contracts against commercial risks and/or country risks, contracts for reinsurance, certain insurances in the context of social security, insurances against risks incurred abroad, insurances in the context of pension savings schemes, insurances in the context of the supplementary pension for the self-employed, the conversion of a life insurance payment into an annuity, hull insurances for seagoing 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, some legal expenses insurance contracts, etc. (Art. 176<sup>2</sup> CMDT).

The tax base is the amount of the premiums, employers' and employees' contributions, plus the charges, to be paid in the course of the tax year either by the policyholders or by the affiliated members and their employers (Art. 176<sup>1</sup> CMDT).

There are four rates (Art. 175<sup>1</sup> to 175<sup>3</sup> CMDT):

- \* **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> CMDT);
- \* **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;
- \* **1.10%:** rate for life insurances, even in respect of investment funds, and life annuities or temporary annuities built up by natural persons.

### 4.5. Annual tax on profit-sharing schemes

Sums divided up by way of profit sharing are liable to this tax (Art. 183*bis* CMDT) 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. 183*ter* CMDT).

The tax is calculated on the total amount of the sums distributed on profit sharing for the tax year (Art. 183*quater* CMDT).

Profit sharing schemes relating to savings insurances in connection with the pension savings scheme and concerning insurance contracts for which the policyholder 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 exempted from the tax under certain conditions (Art. 183*quinquies* CMDT).

### 4.6. Tax on long-term savings

The tax on long-term savings is levied on (Art. 184 CMDT):

- individual life insurances (ordinary insurances and savings insurances) for which the policyholder 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 insurance contracts providing for advantages exclusively in case of death and life insurances whose aim is to secure the repayment or the replenishment of a mortgaged loan (Art. 187<sup>2</sup> CMDT).

The tax is levied (Art. 184 and 186 CMDT), 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 60<sup>th</sup> anniversary of the policyholder 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 10<sup>th</sup> 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 CMDT):

- **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).

#### **4.7. Bill-posting tax**

This tax is levied on all placards posted in the view of the public, when their surface area exceeds 1m<sup>2</sup>, as well as on illuminated signs, etc (art. 188 and following CMDT).

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 CMDT).

The tax amounts to 0.50 euro per m<sup>2</sup> or fraction of a m<sup>2</sup>. The amount of the tax levied on bills which are printed out on a plain paper and stuck up on billboards, without any protection, does not exceed 5 euro (art. 190 CMDT).

In respect of illuminated signs (and the like), there is an annual tax of five times the abovementioned amounts (art. 191 CMDT).



## CHAPTER FIVE

### CUSTOMS PROCEDURES UPON IMPORTATION, EXPORTATION AND TRANSIT

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#### *What is new?*

#### *Introduction of the Authorised Economic Operator system.*

*These procedures are mainly based on the Community Customs Code and on the decrees issued for its implementation.*

#### **5.1. 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 harmonised on Community level.

These duties are levied for the sole benefit of the European Union.

##### ***5.1.1. 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<sup>th</sup>, 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.*

##### ***5.1.2. 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 Harmonised 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. applies. All these possibilities are listed, with the various legal and accessory provisions, in the "Applied Customs Tariff" issued by the administration.

## **5.2. Customs approved treatment**

### **5.2.1. 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.

### **5.2.2. 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, i.e. exportation, transit and importation.

The Single Administrative Document was modified by the Commission Regulation (EC) No 2286/2003 of December 18<sup>th</sup>, 2003, amending the applicable Community Code (OJ L 343 of December 31<sup>st</sup>, 2003). The new Single Administrative Document explanatory note, included in this Regulation, is applicable since:

- January 1<sup>st</sup>, 2007, for paper returns;
- February 4<sup>th</sup>, 2008, for returns sent online via the so-called “Paperless douanes et accises” (PLDA, i.e. Paperless Customs and Excise Duties) program (compulsory for importation and exportation; at this stage, only compulsory for customs officials).

In order to reduce administrative burdens principally borne by economic operators, **EORI** (*Economic Operator's Registration and Identification*) has been introduced: only one customs registration for a company is now necessary in the whole European Union.

The **EORI number** has been created for this purpose: a Community single number used for the registration and the identification of economic operators and other persons in their relations with the customs authorities, and which must be mentioned in the Single Administrative Document.

The provisions as regards EORI came into force on 1 July 2009, but they are at present only compulsory for exportation.

Further information is available on the website of the Customs and Excise Duties Department: <http://www.fiscus.fgov.be/interfdanl/fr/dau/index.htm> (only available in French and Dutch).

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). PLDA (Paperless customs and excise) computerised this procedure for people having to use PLDA or using PLDA voluntarily, so that some copies are no longer used.

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 Administrative 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.

### **5.2.3. 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 no deferment of payment of the VAT is granted by the Administration of the Taxation of Companies and of Income (section VAT)) 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 authorisation 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 authorisation 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).

### **5.2.4. 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)

<u>Tobacco products</u> (2)		
	Cigarettes	200 pieces (3)
or	Cigarillos	100 pieces (3)
or	Cigars	50 pieces (3)
or	Smoking tobacco	250 grams (3)
<u>Alcohol and alcoholic beverages</u> (2)		
	Non-sparkling wines	4 litres (3)
	<u>AND</u>	
	Beer	16 litres (3)
	<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 (3)
<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 (3)
Other goods than those mentioned above		Maximum total value: 430 or 300 or 175 euro (3) (4) (5)

- (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.
- (3) For staff members of means of transport used in international travel from a third country or territory, the exemptions are limited to respectively 40 pieces, 20 pieces, 10 pieces, 50 grams, 2 litres, 8 litres, 0.25 litre, 0.50 litre and 175 euro. If these staff members produce the evidence that they do not travel for professional purposes, the ordinary exemptions apply.
- (4) 430 euro for airpassengers and ship passengers (with the exception of private pleasure flying or boating), 300 euro for the other travellers, 175 euro for travellers under 15 and for travellers mentioned in note (3).
- (5) These amounts can be modified.

2) TRAVELLERS FROM A EU-MEMBER STATE

Goods acquired under domestic market conditions (all taxes paid in the country where they are bought) in a Member State of the EU: travellers coming from a EU Member state are thus allowed to import the acquired goods without restrictions as to their quantity and value.

Excise duties are still due, however, on tobacco products and alcoholic beverages imported for commercial purposes.

In order to determine whether the goods imported by the traveller are so for commercial purposes, the commercial status and the motives of the person concerned shall be taken into consideration as well as the place where the goods are located, the means of transportation used, any document related to the goods as well as the nature and quantity of the latter, following the indicative levels of the table hereafter.

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

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.

**5.2.5. 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 packages, 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 package. These vehicles and package 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.

As from January 1<sup>st</sup>, 2009, the NCTS-TIR is compulsory within the EU. It implies that the return of voucher No 2 has been replaced by an e-mail.

### *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 Computerised 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 conditions, allow the use of transport documents which are specific to the mean of transportation used in lieu of a transit declaration made by means of NCTS. 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 5.1, 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 warehousekeeper 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 warehousekeeper'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 warehousekeeper'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 organisation, which entrusts a series of specialised 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.

### **5.2.6. 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 within the time limits 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.

Since 1 July 2009, the export declaration, including security data, has been compulsorily submitted online via the PLDA-program (ECS = Export Control System).

For exportation to Switzerland and Norway and for expeditions to non-fiscal territories, the security data must not be mentioned.

The document used to support this online procedure is called "Export Accompanying Document" (EAD).

As a result, the ECS applies to indirect exportation (2 Member States concerned). The ECS enables to control the exit out of the customs territory of the EU via the exchange of emails between the customs office of export and the customs office of exit out of the Community.

When the PLDA-program sends the release message, the declarant can, on the basis of this message, print himself an EAD or ask the branch to print it.

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 Administrative Document" for temporary exportation.

### **5.2.7. 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 regularisation, etc.

### **5.2.8. Authorised Economic Operator**

In the international context characterised by the increase of terrorist threats and organised cross-border crime which can seriously endanger not only the whole world economy but also public security, public health and the environment, the European Union is willing to increase security in the international supply chain.

In this context, the European Union, based notably on the "SAFE Standards Framework securing and facilitating world trade", which was adopted on 23 June 2005 by the members of the World Customs Organization, has developed its own Customs Security Programme (CSP). This programme, which balances controls with trade facilitation, contains activities to support and implement measures focused on an increased security via improved customs controls and provides the introduction of appropriate security controls which are liable to ensure the protection of the internal market and the security of the international supply chain, in close coordination with the world's major trading partners. The security amendments of the Community Customs Code [Regulation (EC) No. 648/2005 and Regulation (EC) No. 1875/2006] provide a legal framework for the measures of the CSP programme.

The creation of the Authorised Economic Operator (AEO) status, which is closely linked to other measures introduced in Community Customs Law (information exchange between customs authorities via information technology and computer networks – customs risk management at community level in compliance with Community electronic management – notification prior to arrival and departure, and summary entry and exit declarations), is one of the major elements of the CSP programme and aims at allowing reliable and certified economic operators to benefit from trade facilitation measures. The implementation of all the above-mentioned measures and the mutual recognition of the AEO certification between economic powers which develop or will develop this kind of certification (e.g.: C-TPAT – Customs Trade Partnership Against Terrorism – in the United States), will enable the progressive implementation of a fast customs clearance system (“Green Lane” – almost no control) for goods in an international supply chain of which all parts (manufacturer, exporter, forwarder, warehousekeeper, customs agent, carrier, importer, etc.) are totally secured.

For economic operators which want to remain competitive in the extremely complex international supply chain, the AEO certification, ensuring a qualitative recognition and painting the picture of a reliable trading partner, implies a genuine quality label at international level with notably the following advantages:

- faster and easier access to simplifications such as the status of authorised consignor, the centralised clearance, the guarantee waiver, etc.;
- fewer controls;
- less information transmitted in accordance with security obligations.

The introduction of the AEO status is an important step in the relations between authorised economic operators and customs authorities. This status gives the opportunity to distinguish economic operators whose accounting and supply management and preventive measures as regards security risk management, provide unquestionable quality and reliability guarantees.

Further information about this status is available on the following website: <http://fiscus.fgov.be/interfdan/fr/oeafr/index.htm> (only available in French and Dutch).



## CHAPTER SIX EXCISE DUTIES

### *What is new?*

- *Modification of the special excise duty on gas oil used as motor fuel.*
- *Modification of the general arrangements for excise duty (production, holding, movement, etc.) and of the excise duty regime for non-alcoholic beverages and coffee.*

*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 22 December 2009 concerning the general arrangements for excise duty (BOJ of 31 December 2009);*
- *the Law of 31 December 2009 concerning the excise duty regime for non-alcoholic beverages and coffee (BOJ of 15 January 2010);*
- *the Programme law of 27 December 2004 (BOJ of 31 December 2004);*
- *the Law of 7 January 1998, relating to the structure and excise tariffs on alcohol and alcoholic beverages (BOJ of 4 February 1998);*
- *the Law of 3 April 1997, relating to the fiscal regime of manufactured tobacco (BOJ of 16 May 1997);*

*their modifications and the decrees issued for the implementation of these laws.*

### 6.1. 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.

### 6.2. Classification of excise duties

A distinction is made between:

- a. **excise goods** harmonised 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 goods 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 harmonised 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.

As far as **energy products and electricity, alcohol and alcoholic beverages, as well as manufactured tobacco** are concerned, the European directive concerning the general arrangements for excise duty (the so-called horizontal directive) applies. Moreover, 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**, a special national regime applies irrespective of the provisions of the above-mentioned horizontal directive.

### 6.3. Tax base

Depending on the product, quantity and/or value. See also the section "Rates" below.

### 6.4. General arrangements for excise duty

#### 6.4.1. General

Directive 2008/118/EEC of the Council of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, relates to the general arrangements for excise duty. It was transposed into Belgian law by the law of 22 December 2009 concerning the *general arrangements for excise duty*.

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 for its implementation.

**Excise goods**, i.e. **energy products and electricity, alcohol and alcoholic beverages, as well as manufactured tobacco**, shall be subject to excise duty at the time of their production, extraction or importation.

#### 6.4.2. Chargeability, reimbursement and exemption

Excise duty shall be *chargeable* at the time of *release for consumption* in the country, i.e. at the time of the departure of excise goods from a duty suspension arrangement, at the time of the holding of excise goods outside a duty suspension arrangement where excise duty has not been levied, at the time of the production of excise goods outside a duty suspension arrangement and at the time of the importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement. Excise duty is also chargeable where the absence of goods which must be subject to excise duties is noticed.

A *duty suspension arrangement* is a tax arrangement applied to the production, processing, holding and movement of excise goods not covered by a customs suspension arrangement, excise duty being suspended.

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.

In certain cases and under certain conditions, excise duty on excise goods which have been released for consumption in the country, may be reimbursed or remitted. This applies to excise goods held for commercial purposes in another Member State in order to be delivered or used

there, to excise goods sold in another Member State via distance selling, to exported excise goods, to the correction of some irregularities or errors, etc.

Under certain conditions, there are exemptions for diplomats, consular officers, the armed forces, a certain number of (international) organisations, tax-free shops, goods supplied on board an aircraft or ship during the flight or sea-crossing to a third country or a third territory, etc.

As far as **electricity and natural gas** are concerned, excise duty becomes chargeable by the provider at the time he supplies them to the consumer. Where continuous supplies of natural gas or electricity give rise to successive account statements or payments, the supply is deemed to occur at the expiry of each period to which an account statement or a payment relates.

As regards **coal, coke and lignite**, excise duty becomes chargeable at the time they are supplied to the 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, importer, introducer or possibly his tax representative substitute these registered companies for the obligations imposed upon them. "Retailer" means any natural person or legal body delivering coal, coke or lignite to natural persons or legal bodies for their own consumption. "At the time they are supplied to the retailer" means the date the invoice relating to the delivery was issued.

#### **6.4.3. Production, processing and holding of excise goods**

The production and processing in the country of excise goods shall take place in a *tax warehouse*. Where excise duty has not been paid, the holding of these goods must also take place in a tax warehouse.

A *tax warehouse* is a place where excise goods are, under certain conditions, produced, processed, held, received or dispatched under a *duty suspension* arrangement by an *authorised warehousekeeper* in the course of his business.

An *authorised warehousekeeper* is a natural or legal person authorised, in the course of his business, to produce, process, hold, receive or dispatch excise goods under a duty suspension arrangement in a tax warehouse.

#### **6.4.4. Movement of excise goods under suspension of excise duty**

Excise goods may be moved under a duty suspension arrangement in Belgium from a tax warehouse to:

- another tax warehouse;
- a registered consignee, where the excise goods are dispatched from another Member State;
- a place where the excise goods leave the territory of the Community;
- a certain number of other consignees (diplomats, consular officers, the armed forces, some (international) organisations), where the excise goods are dispatched from another Member State.

They may also be dispatched under a duty suspension arrangement by a registered consignor from the place of importation to one of the above-mentioned destinations. A *registered consignor* is a natural or legal person authorised, under a certain number of conditions and in

the course of his business, to dispatch excise goods under a duty suspension arrangement upon their release for free circulation.

A *registered consignee* may be a company which is not an authorised warehousekeeper. The registered consignee is authorised to receive, in the course of his business, excise goods moving under a duty suspension arrangement from another Member State, but is not allowed to hold these goods or to dispatch them under a duty suspension arrangement. He must register himself before the dispatching of the excise goods, provide a guarantee and fulfil some other conditions. On receipt of the excise goods, excise duty is chargeable and must be paid according to the procedure laid down. A registered consignee is not authorised to receive manufactured tobacco not carrying Belgian tax markings.

The movement of excise goods under suspension of excise duty takes place in principle under cover of an electronic administrative document and according to a determined procedure.

### **6.4.5. Movement and taxation of excise goods after release for consumption**

No excise duty is chargeable for excise goods acquired by private individuals for their own use and transported by themselves, provided excise duty was levied in the Member State in which the goods were acquired. However, there are specific rules to determine whether or not the goods have been acquired by private individuals for their own use.

Excise duty is chargeable where excise goods which have already been released for consumption in another Member State are held for commercial purposes in the country in order to be delivered or used there. The same applies to excise goods which have already been released for consumption in another Member State and which are delivered in Belgium in the context of distance selling. Nevertheless, there is a reimbursement procedure to avoid double taxation. However, no excise duty is chargeable in case of total destruction or irretrievable loss of these goods in Belgium.

### **6.5. Excise duty regime for non-alcoholic beverage and coffee**

“Excise products” means non-alcoholic beverage and coffee.

Excise products are subject to excise duty at the time they are manufactured in the country, imported in the country or introduced (i.e. from another Member State of the EU) in the country.

Excise duty becomes chargeable at the time of release for consumption in the country. “Release for consumption” means the release of excise products from a suspensive procedure, the holding or the manufacture of excise products outside a suspensive procedure as well as the importation and introduction of excise products which are not immediately placed under a suspensive procedure. A suspensive procedure is a tax arrangement applicable to the manufacture, the holding or the movement of excise products, excise duty being suspended.

Excise duty levied on excise products exported, dispatched to another Member State or declared unfit for consumption by a public authority and destroyed under administrative supervision, is reimbursed. Excise duty is also reimbursed in some other cases, such as the correction of errors.

The manufacture, receipt and holding of excise products on which excise duty has not been levied, must take place in an authorised excise establishment. An excise establishment is any place where the manufacture, the holding, the receipt and the dispatching of excise products

take place under a suspensive procedure. The status of authorised excise establishment is granted subject to the submission of an application for authorisation.

Excise products may move, under the suspensive procedure, from an excise establishment to another excise establishment, bound for another Member State or for a customs office of export. Under this procedure, they may also move from a customs office of import located in the country to an excise establishment or bound for another Member State. Finally, they may, upon their entry and under a suspensive procedure, move to an excise establishment, bound for another Member State via the Belgian territory and bound for a customs office of export located in the country.

The dispatching of excise products under a suspensive procedure must be covered by a commercial identification document.

No excise duty is chargeable on excise products acquired by private individuals for their own use and transported by themselves, provided they have been acquired on the terms ruling in the home market in the Member State of acquisition.

Excise products may be manufactured outside an excise establishment, utilising other excise products, provided the excise duty amount relating to the excise product obtained by that process is lower than or equal to the total excise duty amount which has been levied beforehand on each manufactured excise product.

Coffee roasting, the manufacture of extracts, essences and concentrates of coffee, solid or liquid, as well as the manufacture of preparations with a basis of coffee or of extracts, essences and concentrates of coffee, may occur outside an excise establishment, provided excise duty has been levied on manufactured unroasted or roasted coffee.

## **6.6. Checks**

Checks in tax warehouses and excise establishments are carried out on the basis of the accounts of stock related to the commercial accounts of the authorised warehousekeeper or of the holder of the authorisation "excise establishment", and on the basis of verifications of the registers, documents and declarations (administrative accompanying document (AAD), declarations of release for consumption, export declarations, etc.).

Moreover, a stock taking (physical control) shall be carried out at least once a year in the tax warehouse or the excise establishment.

In certain cases, excise agents carry out a permanent check of the production.

When excise goods or excise products are put into circulation, the check is carried out on the basis of the accompanying documents for transport (e.g. in the case of transportation under a suspensive procedure: the e-AD or the commercial document; in the case of transportation with payment of excise duty: according to the case, the simplified accompanying document (SAD) and the security or the commercial documents and the security).

It should be noticed that manufactured tobacco released for consumption in the country must carry tax markings.

It is obvious that the document check can go together with a physical control of the transported goods/products.

The transport of excise goods, which have already been released for consumption in Belgium and which are intended to be transported to another place located in Belgium, via the territory of a Member State, must be covered by a simplified accompanying document.

Inversely, the simplified accompanying document must be used for intra-Community transportation of excise goods which have already been released for consumption, from a Member State to another place in the same Member State, via the Belgian territory.

### **6.7. Rates**

*Remark: some of these rates can be adjusted at very short notice.*

#### **6.7.1. Energy products and electricity**

Directive 2003/96/EC of the Council of 27 October 2003 restructures the Community framework for the taxation of energy products and electricity. At national level, provision is made for this in Chapter XVIII of Title XI – Finance of the Programme Law of 27 December 2004.

For the application of the Programme Law of 27 December 2004, “excise duty” means (ordinary) excise duty, special excise duties, the inspection fee on domestic fuel oil and the levy on energy.

In euro 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>	245.4146	363.6238	28.6317	637.6701
<b>B. Unleaded petrol <math>\geq</math> 98 octane</b>				
1. High-sulphur and high-aromatic	245.4146	354.5238	28.6317	628.5701
2. Low-sulphur and low-aromatic				
2a. Unblended	245.4146	339.5238	28.6317	613.5701
2b. Blended with at least 7% vol bioethanol falling within CN code 2207 10 00 (1)	245.4146	296.5739	28.6317	570.6202
<b>C. Other kinds of unleaded petrol</b>				
1. Unblended	245.4146	339.5238	28.6317	613.5701
2. Blended with at least 7% vol bioethanol falling within CN code 2207 10 00 (1)	245.4146	296.5739	28.6317	570.6202
<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 (2)				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes (3)	0	0	0	0
- businesses having entered into agreements or having implemented tradable permit schemes (3)	9.2960	1.2040	0	10.5000
- 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	0	0
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	8.9738	8.9738
- other businesses	0	0	17.9475	17.9475
3.2. Non-business use	0	0	17.9475	17.9475

- (1) Of an alcoholic strength by volume of at least 99% vol, absolute or in the form of ETBE (ethyl tert-butyl ether) falling within CN code 2909 19 00, and which is not of synthetic origin.
- (2) 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 authorisation for use mainly on the public roadway.
- (3) Kerosene used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works.

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Product	Excise duty	Special excise duty	Levy on energy	Total
<b>E. Gas oil with a sulphur content exceeding 10 mg/kg</b>				
1. Used as motor fuel	198.3148	194.7063	14.8736	407.8947
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)	0	0	0	0
- businesses having entered into agreements or having implemented tradable permit schemes (2)	9.2960	1.2040	0	10.5000
- 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	0 (3) + 0	0
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	5.0000 (3) + 4.2427	9.2427
- 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 authorisation for use mainly on the public roadway.
- (2) Gas oil used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works.
- (3) Inspection fee.



Product	Excise duty	Special excise duty	Levy on energy	Total
<b>F. Gas oil with a sulphur content not exceeding 10 mg/kg</b>				
1. Used as motor fuel				
1a. Unblended	198.3148	179.7063 (5)	14.8736	392.8947 (5)
1b. Blended with at least 5% vol FAME (1) falling within CN code 3824 90 99 and complying to standard NBN EN 14214	198.3148	160.0616 (5)	14.8736	373.2500 (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)	0	0	0	0
- businesses having entered into agreements or having implemented tradable permit schemes (3)	9.2960	1.2040	0	10.5000
- 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	0 (4) + 0	0
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	5.0000 (4) + 3.5511	8.5511
- 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) Fatty acid methyl ester, i.e. a vegetable oil resulting from a chemical processing (esterisation).
- (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 authorisation for use mainly on the public roadway.
- (3) Gas oil used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works.
- (4) Inspection fee.
- (5) A reimbursement amounting to 0.0433 euro per litre is provided for vehicles described in the Programme Law of December 27<sup>th</sup>, 2004, i.e. taxis, motor vehicles intended for the transportation of disabled persons, motor vehicles having more than 8 seats, excl. the driver's seat, intended for the transportation of passengers and vehicles with a maximum allowable mass equal to or exceeding 7.5 tons and which are exclusively intended for the transportation of goods by road..

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Product	Excise duty	Special excise duty	Levy on energy	Total
<b>G. Heavy fuel oil (in euro per 1,000 kg)</b>				
1. Business use				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes (1)	0	0	0	0
- businesses having entered into agreements or having implemented tradable permit schemes (1)	6.5000	1.0000	0	7.5000
- other businesses (1)	13.0000	2.0000	0	15.0000
- production of electricity	13.0000	2.0000	0	15.0000
2. Non-business use	13.0000	2.0000	0	15.0000
<b>H. Liquid petroleum gas (in euro per 1,000 kg)</b>				
1. Used as motor fuel	0	0	0	0
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)	0	0	0	0
- businesses having entered into agreements or having implemented tradable permit schemes (3)	18.5920	1.9080	0	20.5000
- other	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	0 (4) or 0 (5)	0 (4) or 0 (5)
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	8.5523 (4) or 8.6762 (5)	8.5523 (4) or 8.6762 (5)
- other businesses	0	0	17.1047 (4) or 17.3525 (5)	17.1047 (4) or 17.3525 (5)
3.2. Non-business use	0	0	17.1047 (4) or 17.3525 (5)	17.1047 (4) or 17.3525 (5)

(1) Except where used to produce electricity.

(2) 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 authorisation for use mainly on the public roadway.

(3) LPG used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works.

(4) Butane.

(5) Propane.

Product	Excise duty	Special excise duty	Levy on energy	Total
<b>I. Natural gas (in euro per MWh – upper combustion value)</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)	0	0	0	0
- businesses having entered into agreements or having implemented tradable permit schemes(2)	0	0	0	0
- other	0	0	0	0
3. Used as heating fuel				
3a. Business use				
- energy-intensive businesses having entered into agreements or having implemented tradable permit schemes	0	0	0	0
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	0.0942	0.0942
- other businesses	0	0	0.9889	0.9889
3b. Non-business use	0	0	0.9889	0.9889

- (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 authorisation for use mainly on the public roadway.
- (2) Natural gas used under fiscal control for stationary motors, plant and machinery used in construction, civil engineering and public works.

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Product	Excise duty	Special excise duty	Levy on energy	Total
<b>J. Coal, coke and lignite (euro per 1,000 kg)</b>	0	8.6526 (1)	3.0000 (1)	11.6526 (1)
<b>K. Electricity (euro 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	0
- businesses having entered into agreements or having implemented tradable permit schemes	0	0	0.9544	0.9544
- 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 heavy fuel oil, 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, excluding private pleasure flying;
  - 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, excluding private pleasure craft.
  
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), excluding navigation in private pleasure craft, and electricity produced on board a craft;

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- 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. (lapsed);
- k. coal, coke, lignite and solid fuels, where used by households;
- l. natural gas and LPG, where used as propellants;
- m. colseed oil used as motor fuel, when produced by a natural person or a legal person who acts alone or in collaboration with others, depending on his own production, and when sold to an end user without intermediary;
- n. (lapsed);
- o. electricity supplied by the distributor to a “protected residential customer on low incomes or in precarious situations”;
- p. natural gas supplied by the distributor to a “protected residential customer on low incomes or in precarious situations”.

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 packages and intended to be used to operate the systems equipping those same packages during the course of the transport, they shall not be subject to excise duty in Belgium.

In order to prevent exempted 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, exempted gas oil, and in certain cases heavy fuel oil, shall be identified by addition of a red pigment.

### **6.7.2. Alcoholic beverages**

#### **A. Beer**

Beer shall be taken to include any product listed under code 2203 of the combined nomenclature of the common customs tariff of the European Communities (abbreviated as CN Code, see annex to this chapter), as well as mixtures of beer and non-alcoholic beverages of CN Code 2206. The alcoholic strength by volume must exceed 0.5 %.

Per hectolitre-degree Plato of the end product:

	Excise duty	Special excise duty	Total
Beer	0.7933	0.9172	1.7105

in euro

The *number of degrees Plato* measures the percentage in weight of the original extract per 100 grams of beer, this value being calculated from the actual extract and the alcohol contained in the finished product.

The total excise duty on 1 litre of pilsner beer, with a density of 12.5 Plato degrees (in this case rounded to 12 degrees Plato) amounts to:

$$12 \times 1.7105 \text{ euro} / 100 = 0.20526 \text{ euro.}$$

For beer produced by small independent breweries there is a reduced rate, the application of which depends on the production of the brewery concerned during the previous year. These reduced rates are as follows:

Per hectolitre/degree Plato of the end product:

Yearly production	Excise duty	Special excise duty	Total
not exceeding 12,500 hl	0.3966	1.0907	1.4873
not exceeding 25,000 hl	0.3966	1.1403	1.5369
not exceeding 50,000 hl	0.3966	1.1899	1.5865
not exceeding 75,000 hl	0.4462	1.1899	1.6361
not exceeding 200,000 hl	0.4462	1.2395	1.6857

in euro

### B. Wine

A distinction is made between non-sparkling and sparkling wines.

*Non-sparkling wines* (so-called still wines) shall be taken to include all products of CN Codes 2204 and 2205 (see annex to this chapter) except sparkling wines mentioned hereafter. They must have either an actual alcoholic strength by volume of more than 1.2% but not more than 15%, where the alcohol in the end product is obtained entirely through fermentation, or an actual alcoholic strength by volume of more than 15% but not more than 18%, where the alcohol in the end product is obtained entirely through fermentation and, **in addition**, the wines are produced without any enrichment.

*Sparkling wines* (or semi-sparkling wines) shall be taken to include all products of CN Codes 2204 10, 2204 21 10, 2204 29 10 and 2205 (see annex to this chapter). They are presented in bottles with a mushroom-shaped cork which is confined by threads, strips or otherwise, **or** have an excess pressure of not less than 3 bars produced by carbon dioxide in solution. They must have an actual alcoholic strength by volume of more than 1.2 % but not exceeding 15 %, and the alcohol in the end product must be obtained entirely through fermentation.

Per hectolitre of the end product:

	Excise duty (1)	Special excise duty (1)	Total
non sparkling wines	0	47.0998	47.0998
sparkling wines	0	161.1308	161.1308

in euro

(1) 0 euro excise duty and 14.8736 euro 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  $0.7 \times 47.0998 \text{ euro} / 100 = 0.3296986 \text{ euro}$
- The total excise duty for a 0.7 litre bottle of champagne of an alcoholic strength of 11% vol. is  $0.7 \times 161.1308 \text{ euro} / 100 = 1.1279156 \text{ euro}$

**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)	Total
Non-sparkling	0	47.0998	47.0998
Sparkling	0	161.1308	161.1308

in euro

(1) 0 euro excise duty and 14.8736 euro special excise duty for any kind of other (non-sparkling or sparkling) fermented beverage of an actual alcoholic strength by volume of more than 1.2% and not more than 8.5% vol.

Examples:

- the total excise duty for a 0.7 litre bottle of non-sparkling perry of an alcoholic strength of 9% vol. is  $0.7 \times 47.0998 \text{ euro} / 100 = 0.3296986 \text{ euro}$
- the total excise duty for a 0.7 litre bottle of sparkling cider of an alcoholic strength of 9% vol. is  $0.7 \times 161.1308 \text{ euro} / 100 = 1.1279156 \text{ euro}$

**D. Intermediate products**

*Intermediate products* shall be taken to include all products of CN Codes 2204, 2205 and 2206 (see annex to this chapter) which do not come under A, B, or C above and have an actual alcoholic strength by volume of more than 1.2% but not exceeding 22 %.



Per hectolitre of end product:

	Excise duty	Special excise duty	Total
			in euro
« non-sparkling » intermediate products			
a) alcoholic strength exceeding 15% by volume	66.9313	32.2262	99.1575
b) alcoholic strength not exceeding 15% by volume	47.0998	27.2683	74.3681
« sparkling » intermediate products (1)			
a) alcoholic strength exceeding 15% by volume	66.9313	94.1995	161.1308
b) alcoholic strength not exceeding 15% by volume	47.0998	114.0310	161.1308

- (1) in particular: if contained in bottles with a mushroom-shaped cork which is confined by threads, strips or otherwise, or have an excess pressure of not less than 3 bars produced by carbon dioxide in solution.

Example:

The total excise duty for a 0.75 litre bottle of vermouth of an alcoholic strength of 17% vol. =  $0.75 \times 99.1575 \text{ euro} / 100 = 0.74368125 \text{ euro}$

E. Ethyl alcohol

Ethyl alcohol shall be taken to include:

- 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;
- products of the CN Codes 2204, 2205 and 2206 of an actual alcoholic strength of more than 22% by volume;
- distilled beverages whether or not containing products in solution.

Per hectolitre of absolute alcohol at a temperature of 20 °C:

	Excise duty	Special excise duty	Total
			in euro
Ethyl alcohol	223.1042	1,529.1312	1,752.2354

Example:

The total excise duty on a 70 cl bottle of whisky of an actual alcoholic strength of 40% by volume amounts to:  
 $1,752.2354 \text{ euro} \times 0.4 \times 0.007 = 4.906259 \text{ euro}$

F. Exemptions

In certain cases the products listed above are exempted 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).

**6.7.3. Manufactured tobacco**

For manufactured products of tobacco, 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 per 1,000 pieces and smoking tobacco to a specific special excise duty per kilogram.

	Excise duty	Special excise duty	Total
Cigars (2)	5.00 %	5.00 %	10.00 %
Cigarettes (1) (2)	45.84 %	6.57 %	52.41 %
Smoking tobacco (1) (2)	31.50 %	0.00 %	31.50 %

(1) **Cigarettes** are, in addition, subjected to a specific excise duty of 6.8914 euro per 1,000 pieces and to a specific special excise duty of 9.0381 euro per 1,000 pieces.

Moreover, for **smoking tobacco**, a specific special excise duty of 7.9610 euro per kilogram is levied.

(2) For **cigarettes**, the aggregate amount of excise duty and special excise duty (both specific and *ad valorem*) shall in no case be less than 95% of the aggregate amount of the same taxes applicable to the pack of cigarettes in the weighted average price category, but shall not exceed the aggregate amount of excise duty levied on the pack of cigarettes for which there is the greatest demand (e.g. in 2009, the weighted average price was 220.2390 euro per 1,000 pieces; the aggregate amount of excise duties is 131.3568 euro, which means that the minimum amount of excise duty for 1,000 pieces is 124.7890 euro. For other quantities, this amount is calculated proportionally).

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 90% of the aggregate amount of the same taxes applicable to the pack of tobacco in the weighted average price category (e.g. in 2009, the weighted average price was 77.8416 euro per kilogram; the total amount of taxes is 45.9908 euro, which means that the minimum amount of taxes for 1 kilogram is 41.3917 euro. For other quantities, this amount is calculated proportionally).

As regards **cigars**, the aggregate amount of excise duty, special excise duty and VAT shall by no means be less than the aggregate amount of the said duties applying to cigars in the most popular price category (e.g. in 2009, the price of a cigar was 0.2250 euro, which means that the minimum amount of taxes per cigar is 0.0616 euro. For other quantities, this amount is calculated proportionally).

For smoking tobacco assigned by tobacco planters to their own consumption, limited to 150 plants per year, the excise duty shall be computed as being 20% of the retail price of smoking tobacco in the best-selling price class category.

In certain cases (for example denaturing for use in industrial or horticultural applications, for scientific experimentations, re-treatment or reprocessing by the producer), there is under certain circumstances an exemption from excise duty and special excise duty.

<i>Example</i>
<i>Take the case of a pack of 19 pieces of cigarettes priced 4.60 euro. The VAT amounts to 21%/1.21 = 17.36% of the retail price inclusive VAT (VAT rates are expressed as a percentage of the price exclusive VAT). This corresponds to an amount of 0.7983 euro. The total ad valorem excise duty amounts to 52.41% of the retail price, corresponding to an amount of 2.4109 euro. The specific excise duty amounts to 15.9295 euro per 1,000 pieces, corresponding to an amount of 15.9295 x 19/1,000 = 0.3027 euro per 19 pieces (0.1309 euro for the specific excise duty and 0.1717 euro for the specific special excise duty).</i>

**6.7.4. Non-alcoholic beverages**

Per hectolitre, except where otherwise provided:

	in euro
	Excise duty
Rate a	0
Rate b	3.7184
Rate c	0
Rate d1	22.3104
Rate d2 (per 100 kg net weight)	37.1840

*Rate a* applies to waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured, as well as ice covered by CN code 2201.

*Rate b* applies to:

1. waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages covered by CN code 2202, with the exception of milk-based drinks or soya drinks. The concept of "milk-based drinks or soya drinks" is further defined in the circular relating to the application of Article 26 of the Law of 19 May 2010 making fiscal and various provisions (BOJ of 25 June 2010, Ed. 2, p. 39585-39586);
2. beers such as described sub 6.7.2.A, with an alcoholic strength not exceeding 0.5% vol.;
3. wines covered by CN codes 2204 and 2205, with an alcoholic strength not exceeding 1.2% vol.;
4. other fermented beverages covered by CN codes 2204 and 2205, as well as those covered by CN code 2206, with an alcoholic strength not exceeding 1.2% vol.;
5. beverages covered by CN code 2208, with an alcoholic strength not exceeding 1.2% vol.

*Rate c* applies to fruit juices and vegetable juices unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter, covered by CN Code 2009.

*Rate d1* applies to all substances obviously used for the preparation of non-alcoholic beverages mentioned sub 1, packed in either retail-sale packages or packages used for the preparation of such drinks ready for consumption, where the substance is presented in liquid form. *Rate d2* applies where this substance is presented in powder or granular form, or in another solid form. The concept of "substances" is further defined in the circular relating to the application of Article 26 of the Law of 19 May 2010 making fiscal and various provisions (BOJ of 25 June 2010, Ed. 2, p. 39585-39586).

Tap waters, even if they are flowed after possible gasification by fountains directly connected to the water line, and not put up for sale or delivery as drinking waters, are not considered, as regards excise duty, as non-alcoholic beverages.

Beverages based on fruit or vegetable juice intended for the feeding of infants, non-alcoholic beverages intended to be used for research, quality controls and taste testing, as well as waters to which the above-mentioned rate a applies in principle, intended to be freely distributed by official institutions when disasters occur, are exempted from excise duty.

**6.7.5. Coffee**

Per kilogram net weight:

	in euro
	Excise duty
Rate a	0.1983
Rate b	0.2479
Rate c	0.6941

*Rate a* applies to not roasted coffee covered by CN code 0901, *rate b* to roasted coffee covered by CN code 0901 and *rate c* to extracts, essences and concentrates of coffee, solid or liquid, as well as to preparations with a basis of extracts, essences and concentrates of coffee and to preparations with a basis of coffee, covered by CN code 2101.

Coffee intended for other industrial uses than roasting or preparing coffee extracts, and coffee intended to be used for research, quality controls and taste testing, are exempted from excise duty.

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**ANNEX TO CHAPTER SIX**


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**Codes of the combined nomenclature (CN) of the common customs tariff of the European Communities for alcoholic beverages (codes as laid down in annex I to Regulation (EEC) No 2658/87 of the Council of the European Communities of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as modified by Regulation (EEC) No 2587/91 of the Commission of the European Communities of 26 July 1991).**

<b><u>CN Code</u></b>	<b><u>Description</u></b>
0901	coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion
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
2101	extracts, essences and concentrates, of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof
2201	waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured; ice and snow
2202	waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009
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

## EXCISE DUTIES

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<b><u>CN Code</u></b>	<b><u>Description</u></b>
2205	vermouths and other wines of fresh grapes, prepared with aromatic plants or flavoured with aromatic extracts
2206	other fermented beverages (for example, cider, perry, mead), mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, neither named elsewhere nor included elsewhere  including
2206 00 91	sparkling beverages
2207	ethyl alcohol, undenatured, of a strength of 80% by volume or higher; ethyl alcohol and distilled beverages, denatured, whatever the strength
2208	ethyl alcohol, undenatured, of an alcoholic strength by volume of less than 80%; distilled beverages, liqueurs and other beverages containing distilled alcohol
2209	vinegar, natural or obtained from acetic acid

**CHAPTER SEVEN**  
**ENVIRONMENTAL TAXES, THE PACKAGING CHARGE AND THE**  
**ENVIRONMENTAL CHARGE**

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

### **7.1. 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" means supply to retailers of products subject to environmental taxes by companies liable to registration according to stipulations laid down by the Minister of Finance.

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 (129): 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 drinks packages. It is due at the time drinks (see below) packed in individual packages are released for consumption in the matter of excise duty or, where the packing in individual packages 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 package" means any package, whatever the material, intended to be delivered to the end-user without the package to be modified. Moreover "individual reusable packages" (see below) as well as individual non-reusable packages are concerned.

The *environmental charge* is assimilated to an excise duty and is notably levied to compensate CO<sub>2</sub> emitted during the manufacture of some products (see below). It is due at the time these products are released for consumption, i.e. at the time packages and articles (particularly household packages and articles) are delivered to retailers by taxpayers who must register in accordance with the procedures laid down by the Minister of Finance.

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

## 7.2. Rates and exemptions

### 7.2.1. Environmental tax

#### A. Disposable cameras

Rate: 7.44 euro a piece

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.

#### B. Batteries

Rate: 0.50 euro 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 euro a piece and a written proof is delivered to the purchaser that the batteries were supplied in Belgium;
- or where an organised 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.



C. 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 euro for every commenced quantity of 5 litres;
- glues: 0.6197 euro for every commenced quantity of 10 litres;
- inks: 0.6197 euro for every commenced quantity of 2.5 litres.

The tax will by all means be limited to 12.3947 euro per package.

Exemptions: where the packages are collected through a product-linked deposit-refund system, return premium system, packaging-credit system or collection system.

**7.2.2. Packaging charge**

The packaging charge is levied on packaging of drinks. Are considered as “drinks”: water, lemonade and other non-alcoholic drinks, 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 16<sup>th</sup>, 1993, finalising the federal structure of the State).

The charge amounts to 1.41 euro per hectolitre of product packed in individual reusable packages and to 9.86 euro per hectolitre of product packed in individual non-reusable packages. “Individual reusable package” means a package for which evidence is produced that it:

- can be refilled at least seven times;
- is collected by means of a deposit refund system (minimum 0.16 euro for packages of more than 0.5 l and 0.08 euro for packages of not more than 0.5 l);
- is actually being reused.

### **7.2.3. Environmental charge**

The environmental charge amounts to:

- 3.00 euro/kg for disposable plastic bags intended for the transportation of goods purchased in retail shops with CN Code 39.23;
- 3.60 euro/kg for disposable plastic kitchenware with CN Code 39.24;
- 2.70 euro/kg for plastic plates, sheets, strips, tape, foil and other flat shapes, even self-adhesive, even in rolls, for household use, with CN Code 39.19;
- 4.50 euro/kg for aluminium sheets and strips, even printed or backed with paper, paperboard, plastics or similar backing, of a thickness not exceeding 0.2 mm (excluding any backing), even in rolls, for household use, with CN Code 76.07.

For further information about the products concerned, it can be referred to the circular dd. 08.06.2007 (BOJ 15.06.2007 and 06.07.2007).

**ANNEX TO CHAPTER SEVEN**

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

The products referred to in 7.2.1.C 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)

## ENVIRONMENTAL TAXES, THE PACKAGING CHARGE AND THE ENVIRONMENTAL CHARGE

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- f. Esters
  - methyl acetate
  - ethyl acetate
  - isopropyl acetate
  - n-butyl acetate
  
- g. Chlorinated hydrocarbons
  - chloromethane
  - chloroethane
  - dichloromethane
  - chloroform
  - carbon tetrachloride
  - 1,2-dichloroethane
  - 1,2-dichloropropane & -butane
  - 1,1,1-trichloroethane
  - hexachloroethane
  - trichloroethylene
  - tetrachloroethylene (perchloroethylene)
  
- h. Chlorinated aromatic hydrocarbons
  - dichlorobenzenes.

## CHAPTER EIGHT TAXES ASSIMILATED TO INCOME TAXES

### *What is new?*

- *Annual indexation on 1 July of certain rates of the circulation tax.*
- *Modification of the ecobonus/ecomalus system for the registration of vehicles by natural persons residing in the Walloon Region.*
- *In the Walloon Region: takeover of the service of the betting and gambling tax and of the gaming machine licence duty. Modification of the rates of this tax and this duty.*

*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 a 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.*

*As from 1 January 2010, only the Walloon Region is competent to service the tax on betting and gambling taking place on its territory and the duty on gaming machine licences installed on its territory.*

### **8.1. Circulation tax (CT)**

#### **8.1.1. 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).

Motor vehicles are in principle listed in conformity with the regulations concerning their registration at the DIV (direction for the registration of vehicles - Art. 4 CTA). However, a dispensation exists for motor vehicles intended for the carriage of goods, having a maximum allowable mass not exceeding 3.5 tonnes and registered at the DIV as "light trucks", since a fiscal definition of "light trucks" has been introduced from tax year 2006 on.

In the matter of taxes assimilated to income taxes, vehicles designed and constructed for the carriage of goods and having a maximum allowable mass not exceeding 3.5 tonnes, are only considered fiscally as "light trucks" if they are part of one of the four following groups:

1. "Single Cab Pickups", that is to say vehicles consisting of a single cab totally separated from the cargo space and comprising no more than *two* seating positions exclusive the driver, and an open loading platform. The latter may be closed by means of a canvas, a flat horizontal cover or a construction intended to protect the load.

2. “*Double Cab Pickups*”, that is to say vehicles consisting of a double cab, totally separated from the loading area and comprising not more than *six* seating positions exclusive the driver, and an open loading platform. The latter may be closed by means of a canvas, a flat horizontal cover or a construction intended to protect the load.

Vehicles of the pickup type will fiscally be considered as light trucks.

3. “*Vans with a single row of seats*”. These vehicles shall “concurrently” comprise, *on the one hand* a passenger compartment of not more than *two* seating positions exclusive the driver and, *on the other hand*, a loading area separated from the passenger compartment. The passenger compartment and the loading area shall be separated by a partition with a height of not less than 20 cm or, in the absence of such a partition, by the back of the seats. The loading area shall cover at least 50% of the wheel base. Moreover, the whole surface of the loading area shall consist of an integrated, permanent or durably fixed, horizontal platform having no additional anchorages for seats or safety belts.
4. “*Vans with two rows of seats*”. These vehicles shall “concurrently” comprise, on the one hand, a passenger compartment of not more than *six* seating positions exclusive the driver and, on the other hand, a loading area separated from the passenger compartment. Here, the passenger compartment and the loading area have to be separated *completely* by a non-detachable rigid partition running right across the width and the height of the inner compartment. The loading area shall cover at least 50% of the wheel base. Moreover, the whole surface of the loading area shall consist of an integrated, permanent or durably fixed, horizontal platform having no additional anchorages for seats or safety belts.

Where vehicles registered with the DIV as light trucks do not meet the conditions set in respect of their category, they are deemed to be (private) motor cars, twin-purpose cars or minibuses, depending on their construction.

### **8.1.2. Exemptions**

The exempted 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 exempted 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 exempted 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 veterans 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.

### 8.1.3. 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 circulation 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.

#### *Example*

*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:*

$$HP = 4 \times \text{cylinder capacity} + \frac{\text{Weight (in 100 kg)}}{4}$$

*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:*

$$4 \times 1.6 + 2.25 = 8.65, \text{ rounded up to } \underline{9 \text{ HP}}.$$

### 8.1.4. Indexation of the rates

A number of rates are adjusted **on 1 July** 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.

### 8.1.5. Rates

Art. 9 and 10 of CTA provide for circulation 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 1 July 2010 till 30 June 2011.

## TAXES ASSIMILATED TO INCOME TAXES

### A. Motor cars, twin-purpose vehicles and minibuses

HP	Tax in euro (without surcharges, see 8.1.8)
4 or less	64.80
5	81.12
6	117.24
7	153.24
8	189.48
9	225.72
10	261.60
11	339.36
12	417.24
13	495.00
14	572.88
15	650.64
16	852.24
17	1,053.96
18	1,255.68
19	1,457.04
20	1,658.76
for each additional HP above 20 HP	90.48

### B. Motor vehicles intended for road haulage, whose maximum allowable mass is less than 3,500 kg

**19.32 euro** per 500 kg of maximum allowable mass (exclusive surcharges, see 8.1.8).

### C. Motorcycles

Uniform **45.96 euro** tax (exclusive surcharges, see 8.1.8). Where the cylinder capacity does not exceed 250 cm<sup>3</sup>, an exemption from circulation tax is granted, but a small tax is levied by the local authorities.

### D. Coaches and buses

- if ≤ 10 HP: **4.44 euro** per HP with a minimum of **65.06 euro** (exclusive surcharges; see 8.1.8).
- if > 10 HP: **4.44 euro** per HP + **0.24 euro** per HP above 10 HP, with a maximum rate of **12.48 euro** per HP (exclusive surcharges; see 8.1.8).

### 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 recognised 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 8.1.8.), subdivided in 10 tables:

### 1. Self-propelled motor vehicles

- I. Motor vehicle with not more than two axles (30 rates, varying from 59.97 euro to 337.04 euro)
- II. Motor vehicle with three axles (22 rates, varying from 209.67 euro to 448.59 euro)
- III. Motor vehicle with four axles (18 rates, varying from 248.44 euro to 552.11 euro)
- IV. Motor vehicle with more than four axles (58 rates, varying from 59.97 euro to 552.11 euro)

### 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 euro to 524.15 euro)
- VI. Motor vehicle with two axles and trailer or semi-trailer with two axles (30 rates, varying from 260.29 euro to 705.98 euro)
- VII. Motor vehicle with two axles and trailer or semi-trailer with three axles (16 rates, varying from 471.00 euro to 771.35 euro)
- VIII. Motor vehicle with three axles and trailer or semi-trailer with not more than two axles (16 rates, varying from 429.20 euro to 844.70 euro)
- IX. Motor vehicle with three axles and trailer or semi-trailer with three axles (16 rates, varying from 286.07 euro to 771.35 euro)
- X. Compound vehicles made up differently from the configurations mentioned in V to IX (82 rates, varying from 59.97 euro to 808.01 euro)

### Examples

1. *Two-axled truck with a MAM of 10,000 kg: 164.68 euro when pneumatic suspension and 205.85 euro when not;*
2. *Three-axled truck with a MAM of 20,000 kg: 262.15 euro when pneumatic suspension and 374.52 euro when not;*
3. *Four-axled truck with a MAM of 25,000 kg: 269.14 euro when pneumatic suspension and 448.59 euro when not;*
4. *Five-axled truck with a MAM of 30,000 kg: 337.21 euro when pneumatic suspension and 534.86 euro when not;*
5. *Two-axled tractor and single-axled semi-trailer with a MAM of 20,000 kg: 309.87 euro when pneumatic suspension and 393.26 euro when not;*
6. *Two-axled truck and two-axled trailer with a MAM of 30,000 kg: 433.81 euro when pneumatic suspension and 580.37 euro when not;*
7. *Three-axled tractor and two-axled semi-trailer with a MAM of 43,000 kg: 571.00 euro when pneumatic suspension and 844.70 euro when not;*
8. *Three-axled tractor and three-axled semi-trailer with a MAM of 43,000 kg: 313.61 euro when pneumatic suspension and 771.35 euro when not.*

F. Trailers and semi-trailers with a maximal allowable mass (MAM) not exceeding 3,500 kg

**30.36 euro** (exclusive surcharges) when MAM not exceeding 500 kg;

**63.00 euro** (exclusive surcharges) when MAM exceeding 500 kg and not exceeding 3,500 kg.

Derogation for the Flemish Region

The Flemish Region grants an exemption from circulation tax for trailers and semi-trailers with a MAM not exceeding 750 kg, towed exclusively by motor cars, twin-purpose cars, minibuses, ambulances, motorcycles, light trucks, camping cars, buses or coaches.

This exemption only applies to taxpayers resident in the Flemish Region that are not legal persons.

This measure comes into force as from tax year 2008.

N.B.: Camping trailers and trailers for the transportation of one boat remain liable to the fixed-rate charge (see point G hereafter).

G. Vehicles liable to a fixed-rate charge

This tax amounts to **29.41 euro** (exclusive surcharges) and is levied on:

- motor cars, twin-purpose cars and minibuses and motorcycles 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 circulation tax amounts to **29.41 euro** (exclusive surcharges) (Art. 10 CTA).

**8.1.6. 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 long time utilisation of the 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).

### **8.1.7. Additional circulation tax**

Art. 12 and 13 of the CTA provide for the additional circulation tax (ACT).

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 euro
-	from 8 to 13 HP	:	148.68 euro
-	more than 13 HP	:	208.20 euro

Where the vehicle is exempted from circulation tax, it is also exempted from the additional circulation tax, except in certain cases (i.a. 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 8.1.4) does **not** apply to the ACT and **no** municipal surcharge (see 8.1.8) is levied.

### **8.1.8. Surcharge in favour of the municipalities**

This surcharge applies to all vehicles liable to the circulation 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 circulation 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 circulation tax for the vehicle described in the example in 8.1.3. amounts to:

$$225.72 \text{ euro} + 22.57 \text{ euro} = 248.29 \text{ euro}$$

Where necessary, the additional circulation tax (see 8.1.7) must be added.

### **8.1.9. Summary table of the circulation tax**

**Save changes in legal provisions having occurred in the meantime**, the following circulation tax tariffs, surcharges included, apply from 1 July 2010 till 30 June 2011. The table hereafter illustrates the tariffs applying to vehicles with a cylinder capacity of not more than 8.1 litres.

## TAXES ASSIMILATED TO INCOME TAXES

Tax amounts in euro					
Cylinder capacity in litres	HP	Tax	Cylinder capacity in litres	HP	Tax
0.7 or less	4	71.28	4.0 – 4.1	20	1,824.64
0.8 – 0.9	5	89.23	4.2 – 4.3	21	1,924.16
			4.4 – 4.6	22	2,023.69
1.0 – 1.1	6	128.96	4.7 – 4.8	23	2,123.22
1.2 – 1.3	7	168.56	4.9 – 5.0	24	2,222.75
1.4 – 1.5	8	208.43			
1.6 – 1.7	9	248.29	5.1 – 5.2	25	2,322.28
1.8 – 1.9	10	287.76	5.3 – 5.5	26	2,421.80
			5.6 – 5.7	27	2,521.33
2.0 – 2.1	11	373.30	5.8 – 5.9	28	2,620.86
2.2 – 2.3	12	458.96			
2.4 – 2.5	13	544.50	6.0 – 6.1	29	2,720.39
2.6 – 2.7	14	630.17	6.2 – 6.3	30	2,819.92
2.8 – 3.0	15	715.70	6.4 – 6.6	31	2,919.44
			6.7 – 6.8	32	3,018.97
3.1 – 3.2	16	937.46	6.9 – 7.1	33	3,118.50
3.3 – 3.4	17	1,159.36			
3.5 – 3.6	18	1,381.25	7.2 – 7.3	34	3,218.03
3.7 – 3.9	19	1,602.74	7.4 – 7.6	35	3,317.56
			7.7 – 7.8	36	3,417.08
			7.9 – 8.1	37	3,516.61

As far as *vehicles fitted with an LPG fuel system* are concerned, the additional circulation tax (see amounts in point 8.1.7.) must be added to the amounts listed in the table above.

### 8.2. The tax on the entry into service (TES)

#### 8.2.1. 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 road 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 income taxes). 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 once, upon the first entry into service on public roads, in the name of one well-determined person. So, if the same vehicle is entered into service again under another person's name, TES is due again.

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 on the entry into service due on the road vehicle, aircraft or boat has been fully paid by the assignor.

Moreover, 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.

In this Region, "legal cohabitant" and "termination of legal cohabitation" are defined as follows:

- "legal cohabitant": any person living together with the holder of the old registration on the day of the new registration and having made a declaration of legal cohabitation in accordance with the regulations of Book III, Title *Vbis* of the Civil Code, with the exception of two persons cohabiting as defined above and having a father-mother/child, brother/sister or uncle-aunt/nephew-niece relationship, and provided the declaration of legal cohabitation was registered more than one year before the date of the new registration;
- "termination of legal cohabitation": the end of the state of legal cohabitation following a declaration of termination of legal cohabitation, made in accordance with article 1476 § 2 of the Civil Code.

### 8.2.2. Exemptions

The exemptions are listed in Art. 96 of the above-mentioned Code. They apply i.a. to:

- a. vehicles, aircraft and boats used exclusively by a public service of the State or other public authorities;
- b. vehicles used exclusively for the transportation of ill or wounded persons and registered as ambulances;
- c. vehicles used as a personal means of transport by badly disabled war veterans and certain handicapped persons.

### 8.2.3. 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.

### 8.2.4. Rates

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

HP	kW	Tax in euro
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

## TAXES ASSIMILATED TO INCOME TAXES

If the power of a given engine expressed in fiscal HP and in kW causes a different amount of TES to be levied, TES is due on the **larger** amount.

Vehicles having been registered previously in this country or, prior to their final importation, abroad, are entitled to a reduction of TES which is proportional to the number of entire years elapsed between the first registration and the new registration. After the 15<sup>th</sup> year elapsed between the first registration and the new registration, they are taxed at a flat rate.

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 euro (flat rate)

After the reduction has been applied the tax **cannot**, however, **be less than 61.50 euro**.

### Tax reduction

Vehicles running on LPG, even if only partly or occasionally, are entitled to a 298.00 euro reduction of TES. The reduction can't exceed the amount of the tax due, however.

<i>Example</i>
<p><i>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 euro 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 euro x 90% = 780.30 euro. Upon registration 7 years after the first registration, the tax on the entry into service amounts to 867.00 euro x 45% = 390.15 euro. If this car runs on LPG, the tax amounts to 867.00 euro - 298.00 euro = 569.00 euro upon the first entry into service. Upon registration 15 months after the first registration, the tax amounts to (867.00 euro - 298.00 euro) x 90% = 512.10 euro.</i></p>

### B. Aircraft

A fixed-rate amount of 619 euro for ultra-light motorised aircraft and 2,478 euro for the others.

If these aircraft have already been normally 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 euro (flat rate)

<i>Example</i>
<i>An ultra-light motorised aircraft is registered for the first time. The tax amounts to 619 euro. If a subsequent registration occurs 7.5 years after the first, the tax amounts to 619 euro x 30% = 185.70 euro. Upon a subsequent registration at least 10 years after the first, the tax amounts to 61.50 euro (flat rate).</i>

### C. Boats

A fixed-rate amount of 2,478 euro.

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 euro. If a subsequent delivery of a certificate occurs 9.5 years after the first, the tax amounts to 2,478 euro x 10% = 247.80 euro. Upon delivery of a certificate at least 10 years after the first, the tax amounts to 61.50 euro (flat rate).</i>

### Remark

For each taxable vehicle only one invitation to pay will be sent; it will mention the amount of the circulation tax due, possibly the additional circulation tax and the tax on the entry into service.

### **8.2.5. The ecobonus/ecomalus system in the Walloon Region**

This system, according to which an ecobonus is granted or an ecomalus is levied under certain circumstances, is exclusively applicable to motor cars and twin-purpose cars which are put on the road by a natural person residing in the Walloon Region. The ecobonus is paid by the Walloon Region, the ecomalus is levied as a surcharge on the TES. They apply to both new vehicles and second hand vehicles.

The emission category of the vehicles concerned is an essential factor. It is determined on the basis of the CO<sub>2</sub> emission in g/km as fixed according to Directive 80/1268/EEC. Emission categories relating to vehicles are mentioned in Tabel I hereafter.

**TABLE I – EMISSION CATEGORIES**

CO <sub>2</sub> emission in g/km	Emission category
0 – 98	1
99 – 104	2
105 – 115	3
116 – 125	4
126 – 135	5
136 – 145	6
146 – 155	7
156 – 165	8
166 – 175	9
176 – 185	10
186 – 195	11
196 – 205	12
206 – 215	13
216 – 225	14
226 – 235	15
236 – 245	16
246 – 255	17
256 and more	18

**A. ECOBONUS IN CASE OF REPLACEMENT OF A VEHICLE BY ANOTHER**

The ecobonus is calculated on the basis of the following formula:

(emission category of the replaced vehicle) – (emission category of the vehicle newly put into service, after possible deduction)

The possible deduction results from the particular provisions in favour of large families and LPG vehicles. As far as large families are concerned, i.e. families with at least three dependent children, the emission category of the vehicle put into service is reduced by one for families with at least three dependent children and by two for families with at least four dependent children. For LPG vehicles, the emission category of the vehicle put into service is reduced by one.

If the difference calculated according to the above-mentioned formula is **positive**, the vehicle newly put into service gives right to an ecobonus, as mentioned in Table II.

**TABLE II – ECOBONUS IN CASE OF REPLACEMENT OF A VEHICLE**

Difference	Ecobonus in euro
1	100
2	150
3	200
4	250
5	300
6	350
7 and more	400



Remarks:

1. The ecobonus is reduced to 0 euro where the vehicle newly put into service, after possible deduction, belongs to a category higher than 4.
2. The ecobonus amounts to 1,200 euro where the vehicle newly put into service, after possible deduction, belongs to a category lower than 2.
3. The ecobonus amounts to 800 euro where the vehicle newly put into service, after possible deduction, belongs to category 2.
4. The ecobonus amounts to 400 euro where the vehicle newly put into service, after possible deduction, belongs to category 3.
5. The ecobonus is reduced to 0 euro where the vehicle newly put into service is a new vehicle with a higher list price, excluding VAT and options, than 20,000 euro. This list price amounts to 25,000 euro where the beneficiary has at least three dependent children, where he has at least one dependent disabled child or where he is himself disabled. For hybrid electric vehicles belonging to emission category 1 (CO<sub>2</sub> emission of maximum 98 g/km) or vehicles whose only power source is electricity, the list price amounts to 30,000 euro.

B. ECOBONUS IN CASE OF FIRST PUTTING INTO SERVICE (WITHOUT REPLACEMENT) OF A VEHICLE

The ecobonus is calculated on the basis of the following formula:

(average emission category of motor vehicles) – (emission category of the vehicle put into service, after possible deduction)

Possible deductions in favour of large families or LPG vehicles are granted in the way described sub. A.

The CO<sub>2</sub> emission of the average vehicles put on the road, is assumed to equal 160 g/km, which corresponds to emission category 8.

If the difference calculated according to the above-mentioned formula is **positive**, the new vehicle gives right to an ecobonus, as mentioned in Table III.

**TABLE III – ECOBONUS IN CASE OF FIRST PUTTING INTO SERVICE WITHOUT REPLACEMENT**

Difference	Ecobonus in euro
1	0
2	0
3	0
4	200
5 and more	400

Remarks:

1. The ecobonus is reduced to 0 euro where the vehicle put into service, after possible deduction, belongs to a category higher than 4.
2. The ecobonus amounts to 1,200 euro where the vehicle put into service, after possible deduction, belongs to a category lower than 2.
3. The ecobonus amounts to 800 euro where the vehicle put into service, after possible deduction, belongs to category 2.

4. The ecobonus amounts to 400 euro where the vehicle put into service, after possible deduction, belongs to category 3.
5. The ecobonus is reduced to 0 euro where the vehicle put into service is a new vehicle with a higher list price, excluding VAT and options, than 20,000 euro. This list price amounts to 25,000 euro where the beneficiary has at least three dependent children, where he has at least one dependent disabled child or where he is himself disabled. For hybrid electric vehicles belonging to emission category 1 (CO<sub>2</sub> emission of maximum 98 g/km) or vehicles whose only power source is electricity, the list price amounts to 30,000 euro.

**C. ECOMALUS IN CASE OF REPLACEMENT OF A VEHICLE BY A USED VEHICLE**

The replacement of a vehicle by a **used** vehicle leads to the levy of an ecomalus calculated on the basis of the category of the vehicle newly put into service. This presumably applies to a used vehicle recently registered with an existing number plate.

However, where the CO<sub>2</sub> emission of the vehicle put into service is lower than 226 g/km, the ecomalus is only levied if the following difference is **negative**:

(emission category of the replaced vehicle) – (emission category of the vehicle newly put into service, after possible deduction)

The possible deductions are the same as those mentioned sub. A. However, the deductions in favour of large families are only granted where the emission category of the vehicle newly put into service is lower than 15. The emission categories are to be found in Table I above.

The amount of the ecomalus varies depending on the number corresponding to the emission category of the vehicle newly put into service, after possible deduction. Those amounts are mentioned in Table IV.

**TABLE IV – ECOMALUS IN CASE OF REPLACEMENT OF A USED VEHICLE**

Number corresponding to the emission category of the vehicle newly put into service, after possible deduction	Ecomalus in euro
8	100
9	175
10	250
11	375
12	500
13	600
14	700
15	1,000
16	1,200
17 and 18	1,500

**Remarks:**

1. The ecomalus amounts to 1,000 euro where the vehicle put into service belongs to category 15.
2. The ecomalus amounts to 1,200 euro where the vehicle put into service belongs to category 16.
3. The ecomalus amounts to 1,500 euro where the vehicle put into service belongs to a category higher than 16.
4. The ecomalus amounts to 0 euro for vehicles older than 25 years holding the special number plate.

**D. ECOMALUS IN CASE OF PUTTING INTO SERVICE OF A USED VEHICLE WITHOUT REPLACEMENT OF ANOTHER VEHICLE**

The putting into service of a **used** vehicle which does not replace another vehicle leads to the levy of an ecomalus calculated on the basis of the category of the vehicle put into service.

However, where the CO<sub>2</sub> emission of the vehicle put into service is lower than 226 g/km, the ecomalus is only levied if the following difference is **negative**:

(average emission category of motor vehicles) – (emission category of the vehicle put into service, after possible deduction)

The possible deductions are the same as those mentioned sub. A. However, the deductions in favour of large families are only granted where the emission category of the vehicle newly put into service is lower than 15. The emission categories are to be found in Table I above.

The CO<sub>2</sub> emission of the average of the vehicles put on the road is assumed to equal 160 g/km, which corresponds to emission category 8.

The amount of the ecomalus varies depending on the number corresponding to the emission category of the vehicle put into service, after possible deduction. Those amounts are mentioned in Table V.

**TABLE V – ECOMALUS IN CASE OF FIRST PUTTING INTO SERVICE OF A USED VEHICLE WITHOUT REPLACEMENT**

Number corresponding to the emission category of the vehicle put into service, after possible deduction	Ecomalus in euro
8	100
9	175
10	250
11	375
12	500
13	600
14	700
15	1,000
16	1,200
17 and 18	1,500

**Remarks:**

1. The ecomalus amounts to 1,000 euro where the vehicle put into service belongs to category 15.
2. The ecomalus amounts to 1,200 euro where the vehicle put into service belongs to category 16.
3. The ecomalus amounts to 1,500 euro where the vehicle put into service belongs to a category higher than 16.
4. The ecomalus amounts to 0 euro for vehicles older than 25 years holding the special number plate.

**E. ECOMALUS IN CASE OF PUTTING INTO SERVICE OF A NEW VEHICLE**

The putting into service of a **new** vehicle, whether or not it replaces another vehicle, leads to the levy of an ecomalus calculated on the basis of the category of the vehicle put into service.

The amount of the ecomalus varies depending on the number corresponding to the emission category (cf. Table I above) of the new vehicle put into service, after possible deduction. Those amounts are mentioned in Table VI.

**TABLE VI – ECOMALUS IN CASE OF PUTTING INTO SERVICE OF A NEW VEHICLE**

Number corresponding to the emission category of the new vehicle, after possible deduction	Ecomalus in euro
8	100
9	175
10	250
11	375
12	500
13	600
14	700
15	1,000
16	1,200
17 and 18	1,500

The possible deductions are the same as those mentioned sub. A. However, the deductions in favour of large families are only granted where the emission category of the new vehicle is lower than 15.

**Remarks:**

1. The ecomalus amounts to 1,000 euro where the new vehicle put into service belongs to category 15.
2. The ecomalus amounts to 1,200 euro where the new vehicle put into service belongs to category 16.
3. The ecomalus amounts to 1,500 euro where the new vehicle put into service belongs to a category higher than 16.

**Examples**

1. A new vehicle with an emission of 98 g/km (emission category 1) is put into service for the first time. It does not replace another vehicle. Calculation of the ecobonus:  $8 - 1 = 7$ , ecobonus = 400 euro, but raised to 1,200 euro as it concerns a vehicle belonging to emission category 1. No ecomalus is levied because the vehicle belongs to a category lower than 8.
2. A large family with three dependent children puts a new vehicle with an emission of 147 g/km into service. The vehicle does not replace another one. It concerns a vehicle belonging to category 7, reduced in this case to category 6. Calculation of the ecobonus:  $8 - 6 = 2$ , ecobonus = 0 euro. No ecomalus is levied because the vehicle belongs, after deduction, to a category lower than 8.
3. A new LPG vehicle is put into service for the first time. Its emission equals 199 g/km (emission category 12, reduced in this case to category 11 because of the deduction in favour of LPG vehicles). Calculation of the ecobonus:  $8 - 11 = -3$ . No ecobonus because the difference is negative. The ecomalus corresponds to category 11, i.e. 375 euro.

4. A used vehicle with an emission of 199 g/km is put into service by a large family with four dependent children. The vehicle does not replace another one. It concerns a vehicle belonging to category 12, reduced in this case to category 10. Calculation of the ecobonus:  $8 - 10 = -2$ . No ecobonus is granted because the difference is negative, but an ecomalus is levied, corresponding to category 10, i.e. 250 euro.
5. A vehicle with an emission of 156 g/km (category 8) is replaced by a new vehicle with an emission of 103 g/km (category 2). Calculation of the ecobonus:  $8 - 2 = 6$ , ecobonus = 350 euro, but raised to 800 euro as the new vehicle belongs to emission category 2. No ecomalus is levied because the vehicle put into service belongs to a category lower than 8.
6. A vehicle with an emission of 250 g/km (category 17) is replaced by a used vehicle with an emission of 210 g/km (category 13). Calculation of the ecobonus:  $17 - 13 = 4$ , ecobonus = 250 euro, but is reduced to 0 euro as the vehicle put into service belongs to an emission category higher than 4. No ecomalus is levied because the emission of the vehicle newly put into service is lower than 226 g/km and the above calculated difference is not negative.
7. A large family with three dependent children replaces a vehicle with an emission of 210 g/km (category 13) by a used vehicle with an emission of 140 g/km (category 6, reduced in this case to category 5). Calculation of the ecobonus:  $13 - 5 = 8$ , ecobonus = 400 euro, reduced to 0 euro because the vehicle newly put in to service belongs, after deduction, to a category higher than 4. No ecomalus is levied because the emission of the vehicle newly put into service is lower than 226 g/km and the above calculated difference is not negative.
8. A large family with four dependent children replaces a vehicle with an emission of 210 g/km (category 13) by a new vehicle with an emission of 140 g/km (category 6, reduced in this case to category 4). Calculation of the ecobonus:  $13 - 4 = 9$ , ecobonus = 400 euro. No ecomalus is levied because the vehicle put in to service belongs, after deduction, to a category lower than 8.
9. A vehicle with an emission of 145 g/km (category 6) is replaced by a used LPG vehicle with an emission of 175 g/km (category 9, reduced in this case to category 8). Calculation of the ecobonus:  $6 - 8 = -2$ . No ecobonus is granted because the difference is negative. However, an ecomalus is levied because of this negative difference calculated above. The ecomalus corresponds to category 8, i.e. 100 euro.
10. A vehicle with an emission of 230 g/km (category 15) is replaced by a new vehicle with an emission of 260 g/km (category 18). Calculation of the ecobonus:  $15 - 18 = -3$ . No ecobonus is granted because the difference is negative. The ecomalus amounts to 1,500 euro because the new vehicle belongs to a category higher than 16.
11. A vehicle with an emission of 215 g/km (category 13) is replaced by a used LPG vehicle with an emission of 240 g/km (category 16, reduced in this case to category 15). Calculation of the ecobonus:  $13 - 15 = -2$ . No ecobonus is granted because the difference is negative. An ecomalus is levied because of this negative difference. It corresponds to category 15, i.e. 1,000 euro.
12. A large family with four dependent children replaces a vehicle with an emission of 225 g/km (category 14) by a used LPG vehicle with an emission of 240 g/km (category 16). Calculation of the ecobonus:  $14 - (16 - 2 \text{ (deduction in favour of large families)} - 1 \text{ (deduction for LPG)}) = 1$ , ecobonus = 100 euro, but reduced to 0 euro because the vehicle newly put into service belongs, after deduction, to a category higher than 4. The ecomalus amounts to 1,200 euro because the emission of the vehicle newly put into service is higher than 226 g/km and this vehicle belongs to category 16. In this case, neither the deduction for large families nor the deduction for LPG applies.

### 8.3. The Eurosticker

*This Eurosticker is laid down by the Law of December 27<sup>th</sup>, 1994, approving the Treaty concerning the levy of duties for the use of certain roads by heavy lorries, signed at Brussels on February 9<sup>th</sup>, 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 25<sup>th</sup>, 1993, and by the decrees issued for its implementation.*

#### 8.3.1. 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 27<sup>th</sup>, 1994, approving the Treaty establishing the levy of duties on heavy lorries for the use of certain roads).

#### 8.3.2. Taxable vehicles

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 authorised 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 8<sup>th</sup>, 1997 specifying the road system where the Eurosticker is applicable).

#### 8.3.3. Exempted 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.

**8.3.4. Rates**

The rates of the Eurosticker are mentioned in Art. 7.

Rates in euro:

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

**8.4. Betting and gambling tax (BGT)**

Depending on the region, the tax on betting and gambling is levied on the gross amount of the sums and/or stakes involved.

The general rate is 15% in the Flemish Region and in the Brussels-Capital Region, and 11% in the Walloon Region. There are some special cases though (horse-racing, casino gambling, ...) and there are exemptions (exempted lotteries such as "lotto", "presto", "subito", etc.).

As from 1 January 2010, only the Walloon Region is competent to service the tax on betting and gambling taking place on its territory. As far as the two other regions are concerned, the FPS Finance keeps on servicing this tax.

**8.5. Gaming machine licence duty (GMLD)**

The annual flat rate tax on automatic gaming machines is levied on automatic 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 exemptions vary depending on the region.

The amount of the tax varies according to the category of the machine and the Region where it is placed.

There are five categories, from A to E. The classification of the machines in those categories can vary depending on the region. The amounts of the tax are as follows:

in euro

Category	Flemish Region	Walloon Region (*)	Brussels-Capital Region
A	3,570	1,700	3,570
B	1,290	1,100	1,290
C	350	350	350
D	250	250	250
E	150	150	150

(\*) Cf. Art. 33 of the Decree of 10 December 2009 regarding tax fairness and environmental effectiveness for car fleet and passive houses. The rates applicable in the Walloon Region are yearly indexed in accordance with this article.

***As from 1 January 2010, only the Walloon Region is competent to service the duty on gaming machine licences installed on its territory. As far as the two other regions are concerned, the FPS Finance keeps on servicing this duty.***

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

This tax (130), 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%.

130 See also annex 1 to chapter 2 of part I.



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