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The Legal 500 Country Comparative Guides

Belgium

PRIVATE CLIENT

Contributor

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Belgium.

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BELGIUM

PRIVATE CLIENT



1. Which factors bring an individual within the scope of tax on income and capital gains?

Income tax is due by Belgian residents.

An individual is a Belgian tax resident if:

- the main residence is in Belgium; or
- the seat of fortune is in Belgium.

Residency is a factual criterion.

Two presumptions are relevant:

1. the registration in the National Register (rebuttable presumption); and
2. the place of establishment of the family (irrefutable presumption).

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

Belgian residents are subject to income tax on (i) immovable income, (ii) movable income, (iii) professional income and (iv) miscellaneous income. Capital gains are taxable as miscellaneous income unless realized within the "normal management of private wealth".

Income is in principle taxable at progressive tax rates (currently ranging from 25% to 50%), to be increased with communal surcharges. Separate tax rates however apply for movable income (in principle 30%) and miscellaneous income (in principle 33%). The communal tax rates differ from one municipality to another and are currently ranging from 0% to 9% (average of 7%).

No exit tax is applicable upon emigration.

The tax year starts on 1 January of year X and ends on

31 December of year X. Tax returns must in principle be submitted by 30 June of year X+1. The tax must be paid within two months after the receipt of the tax assessment.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Professional withholding tax is applicable on salaries and pensions paid by a Belgian employer or pension fund. A Belgian company needs to withhold tax on dividends and coupons from bonds. On conditions, tax residents must withhold tax on interest paid.

A Belgian bank must levy withholding tax on dividends and interest credited on their accounts. For Belgian tax residents the tax withheld by the Belgian bank is the final tax. They do not need to declare the dividends and interest in their annual income tax return.

The basic rate of the withholding tax for dividends and interest is 30%. On conditions, rates of 20%, 15% and 10% can be applicable.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Belgium has entered into more than 100 bilateral treaties to avoid the double taxation of income. Almost 100 treaties are to be covered by the Multilateral Instrument.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it

charged, and when must tax returns be submitted and tax paid?

Belgium has no wealth tax.

There is a tax on securities accounts (TSA), held either in Belgium or abroad, of which the account holder is a Belgian resident (individual or legal entity).

The tax is also applicable to securities accounts held by entities targeted by the Cayman tax of which a Belgian resident is the founder (see 23).

The TSA, levied at 0,15%, is due if the average annual value of the securities account amounts to €1.000.000 or more per year (from 1 October in year X until 30 September in year X+1). The threshold is to be assessed per account.

All financial products held in the securities account are in scope, including cash. Registered shares remain out of scope.

On accounts held in Belgium, the tax is levied by the Belgian bank. For foreign accounts a specific tax return must be submitted by the taxpayer and the tax needs to be paid before the submission of the income tax return.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

1. Inheritance tax

Belgian inheritance tax liability is linked to the residency of the demised (at the date of the demise). The residency and citizenship of the heir are irrelevant. The same applies to the citizenship of the demised.

If the demised is not a Belgian resident, Belgian inheritance tax can only be applicable on Belgian real estate.

In principle, the inheritance tax return must be submitted within 4 months after the demise.

Inheritance tax is levied by the Belgian regions (Flemish Region, Walloon Region and Brussels Capital Region).

In principle, inheritance tax is paid in the region in which the deceased was a tax resident.

Tax is levied at progressive rates, depending on the value of the inherited assets and kinship between the

heir and the deceased.

	Flemish Region	Walloon Region	Brussels Capital Region
Spouses Registered partners De facto partners (Fl.) Direct line	3-27% (as from €250K)	3-30% (as from €500K)	3-30% (as from €500K)
Siblings	25-55% (as from €75K)	20-65% (as from €175K)	20-65% (as from €250K)
Uncles, aunts, nephews, nieces		25-70% (as from €175K)	35-70% (as from €175K)
Others	25-55% (as from €75K)	30-80% (as from €500K)	30-80% (as from €175K)

In the Flemish Region, the tax must be paid by the heirs within 2 months, following the receipt of the assessment. In the Walloon Region and Brussels Capital Region, the tax must be paid by the heirs within six months after the demise.

2. Gift tax

Gift tax depends on the way the gift is made and on the type of the gifted assets.

No gift tax is due on gifts of movable assets made in a private agreement (e.g. handsel) as long as the gift is not voluntarily registered in Belgium. However, there is a risk for 3 years (5 years in the Walloon Region) of inheritance tax upon demise of the donor as a Belgian resident.

Gifts before a Belgian notary automatically trigger gift tax, upon the mandatory registration of the deed by the notary. Since 15 December 2020, gifts made by Belgian residents before a foreign notary need to be registered in Belgium.

The residency or citizenship of the donee is irrelevant. The same is true for the citizenship of the donor.

Gift tax is always due when immovable assets situated in Belgium are gifted: a notarial deed is mandatory.

The registration of the deed triggers the gift tax. No tax return must be submitted.

Gift tax is levied by the region where the donor resides.

Registered gifts of movables are taxed at a flat rate of 3%/3,3% for gifts between spouses, registered partners, (and *de facto* cohabitants in Flanders) and in direct line, or 5,5%/7% for gifts between other persons.

In the three regions, immovable property gifts are taxed at the same rates. In direct line or between spouses and legal partners (and *de facto* cohabitants in Flanders) from 3% up to 27% (above €450.000) and between other persons from 10% up to 40% (above €450.000).

In principle gift tax is payable by the donee. The

payment of the tax by the donor is not a gift.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

The dwelling is exempt from inheritance tax between qualifying partners.

On conditions, special rates apply to legacies of family businesses and – companies (Flemish Region and Brussels Capital Region: 3% between qualifying partners and in direct line and 7% between other persons; Walloon Region: exemption).

On conditions, gifts of family businesses and – companies are exempt.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

In the Flemish Region, gifts and legacies to charities and public foundations are exempt. Gifts and legacies made to a private foundation remain subject to 5,5% gift tax and 8,5% inheritance tax.

In the Brussels Capital Region, gifts and legacies to charities are taxed at 7% gift tax and inheritance tax. For private foundations the rates are 7% gift tax and 25% inheritance tax.

In the Walloon Region, gifts and legacies to charities, public and private foundations are subject to 7% gift and inheritance tax.

The above tax rates are only applicable to entities established within the EEA.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

Transfer tax is due on the purchase of Belgian property. The tax ranges from 3% up to 12,5%, depending on the region and the use of the property (dwelling, second

residence, investment...).

Annual property tax is levied.

Income tax is also due by residents on the cadastral value or on the rental income (dwelling exempted).

Non-residents are in principle subject to non-resident tax on their Belgian immovable income.

10. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

The sale and / or purchase of certain securities by or on behalf of a Belgian resident are subject to a tax on stock exchange transactions (TSET).

The rate ranges between 0,12%-1,32% depending on the security. The tax is capped per transaction (ranging between €1.300 and €4.000).

11. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

For income tax purposes, a new expat regime has entered into force as from 1 January 2022.

In principle, the expat will qualify as a tax resident with income tax liability over his worldwide income.

Up to 30% of the Belgian professional income of the expat can qualify as a reimbursement of costs (without tax liability). Additional costs can be exempted from tax, upon conditions.

12. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

The individual's structure must be assessed, as certain foreign legal structures might trigger adverse Belgian tax consequences, for example with respect to the Cayman tax (see 25). A shareholder may also consider reducing the company's capital before moving to Belgium to avoid taxation on a deemed dividend on a *pro rata* basis.

No step up is granted upon immigration. An individual may therefore consider realizing capital gains that are

taxable in Belgium before becoming a resident.

13. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

Children have a combined forced heirship on half of the estate.

The surviving spouse also has a forced heirship consisting of the usufruct on half of the estate (Including at least the dwelling).

Registered / *de facto* partners do not have a forced heirship.

14. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

Spouses without a marriage contract are subject to the statutory regime (community of assets). Pre-marital assets and assets received by inheritance or gift remain the personal property of the spouses. The remainder of the assets are common. Upon demise of the first spouse, half of the common assets falls in the estate, the other half belongs to the surviving spouse.

The spouses can choose another matrimonial regime via a marriage contract: e.g. the separation of property or the universal community of property.

Tailor-made clauses can be inserted in the contract.

15. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

Following the EU Succession Regulation, Belgian law applies to the estate of a deceased Belgian resident who did not make a valid choice for law of the nationality in a will.

Belgian nationals can also make a valid choice for Belgian law in their will.

16. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which

the deceased owned property?

Following the EU Succession Regulation, Belgium must in principle accept the application of a foreign succession law, when this concerns the law of the nationality of the deceased and a valid choice of law was made in a will.

17. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

If no will has been made, the law will appoint the heirs.

Individuals who do not have (grand)children should make a will. The same goes for registered or *de facto* partners (see 13)

Foreign nationals can make a choice of law in their will for the law of their nationality to avoid Belgian forced heirship rules.

Belgium recognizes notarial wills, handwritten wills and international wills.

18. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

On death, the heirs acquire the ownership of the assets in the estate. They can act on behalf of the estate with a certificate of succession.

19. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

A trust cannot be settled under Belgian law.

Belgium has its own private foundation, mostly used for charitable purposes, an art collection, ... No material gains can be granted to the founder, directors or any other person (unless fitting within the foundation's disinterested purpose). Belgium also allows private foundations to be organized as administrative offices

(so-called *STAK*) through which the legal and economic ownership of shares can be split. In exchange for the contribution of shares, the foundation issues certificates that represent the economic ownership of the shares. The (board of the) foundation exercises the control over the shares.

Belgian partnerships are also often used to administer and regulate family wealth, such as the family-owned business or an investment portfolio.

Since the introduction of the new Code of Companies and Associations, voting and profit rights can be modulated more flexibly. The family-owned business can now also be administered and regulated at the level of the holding company.

20. How are these structures constituted and what are the main rules that govern them?

Both foundations, companies and partnerships are governed by the Code of Companies and Associations. Foundations and companies must be incorporated in a notarial deed. A partnership can be constituted in a private deed. All three entities are registered in the Crossroads Bank for Enterprises.

A private foundation requires at least one founder and at least one director. The accounting obligations depend on the size of the foundation, annual accounts to be published at the National Bank of Belgium or to be submitted to the commercial court's registry. Gifts with a value of more than €100.000 require ministerial approval (exception for handsels).

Depending on the legal form of the company, at least one shareholder and at least one director is required. Annual accounts must be published at the National Bank of Belgium.

Partnerships require at least two partners. Although accounting obligations apply, annual accounts must not be published.

21. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

Information registered in the Crossroads Bank for Enterprises is publicly available.

The same goes for annual accounts filed with the

National Bank of Belgium.

Notarial deeds (e.g. incorporation deeds) and company decisions are published in the Belgian Official Gazette and are publicly available.

The ultimate beneficial owners ("UBOs") of all entities incorporated in Belgium must be registered in the Belgian UBO register. Based on current Belgian legislation, the information on UBOs of companies (including partnerships) is (partially) available to the public (with or without legitimate interest) and the information on UBOs of foundations is only available to members of the public demonstrating a legitimate interest. However, on 22 November 2022, the European Court of Justice rendered a judgement declaring the currently prescribed public accessibility of the UBO information invalid, given the incompatibility of this public access with the fundamental right to protection of private life and the right to protection of personal data. Pursuant to this judgment, public access to the information in the Belgian UBO register has been (temporarily) blocked. It is now up to the legislator to amend the Belgian legislation.

22. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

The Belgian private foundation itself is subject to the tax for legal entities (comparable to the income tax, see 2 to 3). The contribution into the foundation is subject to gift tax if contributed in a notarial deed. Distributions made by the foundation are in principle not taxable in Belgium.

Private foundations so-called *STAK* can be transparent for income tax purposes. The certificate holder is then taxable on the income received by the foundation, as if he/she received it directly, see 2 to 3.

Shareholders of companies with separate legal personality are subject to income tax upon distribution (see 2). Generally, the company itself is subject to corporate income tax of 25%.

Partnerships are transparent for income tax. The partners are subject to income tax with the income generated within the partnership (see 2 to 3).

23. Are foreign trusts, private foundations, etc recognised?

Belgium recognizes trusts, private foundations etc. that have been validly incorporated under foreign law.

24. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Belgium applies the so-called Cayman tax to Belgian residents who are settlor and/or beneficiary of foreign structures that are not subject to (sufficient) income tax. All trusts are targeted. Entities with separate legal personality are in scope when they are subject to less than (i) 15% when established outside the EEA or (ii) 1% when established within the EEA, to be assessed on a Belgian taxable basis.

First, the Cayman tax imposes a reporting obligation. Settlers / founders must annually report the existence of the entity in their income tax return. Beneficiaries must report the trust in years of receipt of a benefit.

Secondly, a transparency measure applies. Settlers / founders are annually taxable on the income of the entity, as if directly received.

Lastly, beneficiaries are subject to 30% tax on distributions. Exception is made for the initial contribution (deemed to be distributed last) and income that has already been subject to its appropriate Belgian income tax regime, eg on the basis of the transparency measure (distributed on a LIFO basis).

25. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

Transfers into trusts and private foundations that have been made with fraudulent intent are not opposable towards the creditors of the settlor / founder.

If the beneficiary has a claim on the trust / private foundation, then the beneficiary's creditors can in principle seize this claim. In practice, the execution of such seizure will depend on the *lex rei sitae* and the trustee.

26. What provision can be made to hold and manage assets for minor children and grandchildren?

In principle, the assets of minor children are managed by their parents. Structures to administer and regulate private wealth are also often used to hold and manage assets for minor children (see 19).

27. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

Individuals are advised to draft a living will in a notarial deed, in which they can grant a mandate to manage their assets and include a health care directive.

28. What is the jurisdiction's approach to information sharing with other jurisdictions?

Belgium shares financial information with other jurisdictions based on CRS and FATCA. As a member state of the European Union, Belgium also implemented a UBO register and implemented the Mandatory Disclosure Directive based on which cross-border tax arrangements must be reported.

29. What important legislative changes do you anticipate so far as they affect your advice to private clients?

At the federal level, an income tax reform will be made public in Q1 2023. The purpose is a tax shift: a decrease of tax on professional income combined with an increase of tax on income from capital and wealth.

A new bilateral treaty with France has been signed and could enter into force as from 2024. The tax burden on French dividends will increase. Upon conditions, capital gains realized by a Belgian tax resident on shares of a French company will become taxable in France.

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