

TAX ASPECTS OF PERSONAL INVESTMENTS FOR
BELGIAN RESIDENTS
INCOME 2014

The purpose of this memorandum is to give a general overview of the tax treatment in Belgium of income from personal investments (a.o. dividend income and interest) derived by a Belgian resident. We also provide a brief summary of certain tax efficient investment possibilities.

A. DIVIDEND INCOME AND INTEREST

1. **Dividend income**

a. *Belgian dividends*

Dividends received in Belgium (f.e. via a Belgian bank) or from Belgian source are in principle subject to a “liberating” withholding tax at source of 25% . The received dividends do not have to be filed in the annual income tax return. The withholding tax constitutes the final tax.

b. *Foreign dividends*

Dividends of non-Belgian origin that are collected outside Belgium, must be filed in the annual income tax return. These dividends are subject to a flat rate tax of 25% upon assessment (increased with a municipal surcharge in case the source of the income is outside of the European Economic Area), unless a joint taxation is more advantageous for the taxpayer.

It is important to underline that the foreign withholding tax (in general 15%) at source can not be set off against the Belgian tax. The foreign withheld taxation at source is in principle deductible from the received dividend (= net income).

c. *Liquidation proceeds and purchase of own shares*

As of October 1, 2014, the liquidation proceeds received from the entire distribution of a company, the purchase of treasury shares and the partial distribution will become subject to withholding tax at the rate of 25%.

Until that date, the liquidation proceeds that are received by the full distribution of a company subject to a withholding tax at the rate of 10%

d. *Capital gains*

Capital gains realised on the transfer of shares by individuals are, in principle, exempt from tax unless these capital gains derive from speculative operations.

Exception: the transfer of shares in a Belgian company, in which the transferor (and his nearest family) hold at least 25% of the shares, to a non-EEA company (with some exceptions based upon double tax treaties) are subject to a capital gains tax of 16.5% (increased with municipal surcharge).

2. **Interest income**

a. Belgian interest

Interest received in Belgium (e.g. via a Belgian Bank) or from Belgian source are subject to a “liberating” withholding tax at source at a rate of 25 %.

The taxpayer must not file this income in his annual tax return. The withholding tax is the final tax.

Interest earned on a savings account are exempt from withholding tax at the rate of 1,900.- Eur. The amount exceeding 1,900.- Eur. is subject to a “liberating” withholding tax at source at a rate of 15%.

b. Foreign interest

Interest of non-Belgian origin and collected outside of Belgium, must be filed in the annual income tax return. The interest is in principle subject to a flat tax rate of 25% (increased with a municipal surcharge in case the source of the income is outside of the European Economic Area), unless a joint taxation is more advantageous for the taxpayer.

Since the European Savings Directive entered into force on 1 July 2005, most European countries exchange information with regard to the interest received abroad. A few countries have chosen for a withholding tax of 35% (f.i. Luxemburg, Austria and Switzerland). If any tax is withheld abroad, this tax can be compensated with the Belgian taxes due and in occurring case refunded.

It is important to know that the qualification under the European Savings Directive is not entirely the same as the Belgian qualification for taxation. It can be that a savings product, that falls under the scope of the European Directive, is considered as non taxable income for a Belgian resident.

3. TOB or Stock Exchange Tax

In Belgium there is a tax due for a number of purchase and sale transactions of securities. The following rules apply.

a. Shares:

The subscription of new shares (through IPO, capital increase, ...) is not subject to any Stock Exchange Tax. The purchase and sale of shares on the secondary market is subject to a tax applied at the rate of 0.25% with a maximum of 740.- Eur per transaction.

b. Bonds:

The purchase of new bonds (new issue) is not subject to any Stock Exchange Tax. The purchase and sale of bonds on the secondary market is a tax applied at the rate of 0.09% with a maximum of 650,- Eur per transaction.

c. Savings bonds:

The inscription on savings bonds is not subject to any Stock Exchange Tax.

d. State bonds:

The purchase of new government bonds (new issue) is not subject to any Stock Exchange Tax. The purchase and sale of State bonds on the secondary market is subject to a tax applied at the rate of 0.09% with a maximum of 650.- Eur per transaction.

e. Capitalization Funds:

No Stock Exchange Tax on the purchase of any capitalization funds is levied. There is a tax applicable to the sale of these funds at the rate of 1% to a maximum of 1,500.- Eur per transaction.

f. Distribution Funds:

No Stock Exchange Tax is levied when buying or selling any distribution funds.

g. Transition from one sub-fund to another:

The transition from capitalization funds to another capitalization fund or distribution fund is subject to Stock Exchange Tax at the rate of 1% with a maximum of 1,500.- Eur per transaction. No Stock Exchange Tax is levied on the transition from a distributing funds to another distributing fund or capitalization fund.

B. TAX FAVOURABLE INVESTMENT POSSIBILITIES

Capital gains realised by individuals are, in principle, not taxable. The following investment possibilities are based on this principle and are attractive from a tax point of view.

1. SICAV (Société d'Investissement à Capital Variable) (Growthfund)

The SICAV is a particular holding company under the laws of Luxembourg. Most of the SICAV's offered to Belgian investors do not distribute any dividend. The capital gain realised at the moment of purchase by the SICAV of its proper shares is exempted from tax. The SICAV is as a company in principle exempted from corporation taxation and Stock Exchange Tax. The management costs and the entrance/exit costs can be considerable.

The return generated by the SICAV is treated for tax purposes as an income from bonds and debentures and consequently considered as interest. This will also be the case if at the moment of the public offer in Belgium the interest rate or the amount of the reimbursement is determined and if contracted for no longer than 8 years. The return is subject to a withholding tax at a rate of 25% which is the final tax if it is collected by an intermediary established in Belgium. If the return is collected outside Belgium, the taxpayer must declare the income in his annual tax return (25%). A municipal surcharge will be applied in case the source of the income is outside of the European Economic Area. This regulation came into force with regard to shares issued as from 7 April 1995.

Through the implementation of the Savings Directive as from 1 July 2005, certain SICAV's held by Belgian residents in Luxemburg will endure a withholding tax. As from 1 July 2011, the applicable tax rate is 35%. As of January 1st, 2015, Luxembourg will not levy this withholding tax anymore, and will start with the exchange of information instead.

The by the European Directive aimed products are the mixed funds of the distribution type if more than 15% of the assets of the Sicav are invested in fixed interest products. As of January 1, 2011, the capital gains in mixed funds of the capitalisation type are also taxable, if at least 25% is invested in fixed interest products.

2. BEVEK (Beleggingsvennootschap met veranderlijk kapitaal)

From 1 January 1991, the Belgian investment companies with a variable capital (so called BEVEK's) are regulated. From a tax point of view the principle of the tax exempted capital gains is applicable.

BEVEK's are issued by Belgian bank institutions. Contrary to the SICAV's in Luxembourg, the BEVEK's are subject to a Stock Exchange tax.

Under the same conditions as for the SICAV's the return of the BEVEK is subject to a withholding tax at a flat rate of 25 %, which is the final tax.

3. Privak

A Privak is an institution for the investment in companies not listed on the stock market and in so-called growth companies. Dividends received from a Privak are in principle subject to a withholding tax at a rate of 25%. The dividends are nevertheless exempted from withholding tax when they come from capital gains. To benefit from the exemption following conditions have to be met:

- Dividends distributed by a Belgian Privak;
- an exemption is granted for the part of the dividend which is derived on capital gains on shares realised by the Privak.

4. Closed-end real estate collective investment company

The closed-end real estate collective investment company is an investment company with a fixed number of shares and with a fixed capital. The purpose of this company is to invest the capital collected in the public market in real estate. Under the same conditions as for the SICAV the return from a real estate BEVAK is taxable at a rate of 25% withholding tax. Under certain conditions an exemption can be granted. This will be the case if at least 60% of the real estate is located in Belgium and used for private purposes only.

5. Real Estate certificates

Real Estate certificates are participation certificates issued for the amounts transferred to a investment company which invests in commercial real estate. The return is to be divided between the participants. The return from participation certificates is taxed at a rate of 25%.

6. Life insurance (Branch 21)

These are traditional individual life insurance contracts with a guaranteed return¹.

The return calculated at a rate of 4.75% (regardless of the actual return!) is taxable as interest at the flat rate of 25%, in the case of payment in capital per expiration date (not in the case of periodic payments), unless the policyholder is an individual and:

¹ Article 19, §4 I.T.C.'92 in fine stipulates that the annual guaranteed return can not be below 4.75 % of all the premiums. Most Life insurance companies lowered the guaranteed return to 2.25 à 2.75% per annum.

1. either the policyholder is the sole beneficiary of the contract and the advantage is stipulated "*inter vivos*" for himself, and the contract provides for a capital of at least 130 % of the paid up premiums;
2. either the contract is concluded for a term of more than 8 years and no payments are made within the 8 years.

As from 1 January 2013 a tax of 2% is applicable on the premiums.

Since January 1, 2013, mention must be made of the existence of non-Belgian life insurance contracts in the personal income tax return by the insurance policy holder.

As from 1 January 2017, the European Savings Directive will be applicable on such products. However, this is only the case for Branch 21 life insurances that have been concluded not earlier than July 1, 2014.

7. Unit linked life insurance (Branch 23)

In principle the return of such an insurance contract is exempted from tax. However, if at the moment of subscription the parties entered into a contract stipulating either the interest rate, the term or the amount (which sort of products are very limited offered), this return will be treated as taxable interest. As a consequence the return is subject to a withholding tax of 25% for Belgian contracts. The return from non-Belgian contracts, received outside Belgium, must be declared in the annual tax return (25%) A municipal surcharge will be applied in case the source of the income is outside of the European Economic Area.

The return is exempted under the same conditions as mentioned above (6. Life insurances Branch 21).

These financial products are attractive because of the advantages: low costs, flexibility and the possibility of estate planning.

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As from 1 January 2017, the European Savings Directive will be applicable on such products. However, this is only the case for Branch 23 life insurances that have been concluded not earlier than July 1, 2014, and if the actual performance of the life insurance policy is at more than 40 % linked to interest paying products. This percentage will be reduced to 25% as of January 1, 2016.

8. Annuities

Against surrendering of a capital, the payment of an annuity can be provided by a (life) insurance company or other company. Such annuity can be temporary or lifelong. Only the interest component included in the annuity payment is taxed. The interest component is established at three percent of the surrendered capital and is taxed at a rate of 25% (increased with a municipal surcharge).

9. Personal investment company

The establishment or acquisition of a foreign investment company established in a tax haven, can be an alternative, because these companies can invest in a tax-efficient way. In Belgium there is no taxation for the shareholder on a deemed investment income.

One has to take into account the anti-avoidance rule of article 344 §2 of the Belgian Income Tax Code. The Belgian tax administration is not bound by the transfer of cash, bonds, securities or shares etc.... into an investment company subject to a low or zero tax regime unless the operation was carried out for legitimate financial or economic reasons. There is a risk that the Belgian tax administration considers that the contributor still benefits from the income in his own name, with all tax consequences applicable as if the transfer had not been realised.

Therefore, the acquisition of an existing foreign investment company (in preference founded before 27 March 1992) could be an attractive alternative. As the offer of these companies is strictly limited, the cost of acquisition is rather high.

A taxation of 10% is applicable on the sums received above the paid up capital from the whole or partial liquidation of a domestic or foreign company and with the buy back of proper shares by such a company. As from 1 October 2014, the rate of this taxation will be 25%.

In the annual tax return mention must be made if you have a foreign bank or foreign life insurance policy, or if you are the settler or beneficiary of a a non-Belgian tax structure.

Finally it should be noted that the European Savings Directive which is referred to above does not apply to companies that receive cross-border interest, unless they are considered as a foreign legal construction which is not submitted to any tax, or very limited tax. The European Saving Directive contains a list of the constructions which are considered as such. This list is indicative, and the presumption of non-taxation can be refuted.

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This memorandum is intended only to outline in general the various investment techniques and their applicable taxation. No rights can be derived from this memorandum.

If required, our office is able to give further, more personalised advice.

Vandendijk & Partners
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