

**International
Comparative
Legal Guides**



Practical cross-border insights into private client work

**Private Client
2023**

12th Edition

Contributing Editors:

Edward Reed & Robin Vos
Macfarlanes LLP

ICLG.com

Industry Chapter

- 1** **STEP's Public Policy Focus 2022**
Emily Deane, Society of Trust and Estate Practitioners (STEP)

Expert Analysis Chapters

- 5** **UK Immigration Options for HNWIs Following the Demise of the Investor Visa**
Tom Marsom & Edward Reed, Macfarlanes LLP
- 11** **Tax U-turns but Beneficial Ownership Registers Proceed at Pace – The Complicated World of the HNW Adviser**
Helen Ratcliffe & Lara Mardell, BDB Pitmans LLP
- 18** **Pre-Immigration Planning Considerations for the HNW Client – Think Before You Leap**
Joshua S. Rubenstein, Katten Muchin Rosenman LLP

Q&A Chapters

- | | |
|--|---|
| <p>25 Andorra
FINTAX ANDORRA: Jose María Alfín Martín-Gamero, Martí Periaño Laporta & Daiana Díaz Custodio</p> <p>33 Belgium
Tiberghien: Griet Vanden Abeele, Emilie Van Goidsenhoven & Alain Van Geel</p> <p>41 Brazil
Vellozo Advogados: Joanna Oliveira Rezende Barbosa & Natalia Zimmermann</p> <p>48 Cyprus
Elias Neocleous & Co LLC: Elias Neocleous, Elena Christodoulou & Alexis Christodoulou</p> <p>57 Denmark
Rovsing Advokater P/S: Mette Sheraz Rovsing & Troels Rovsing Koch</p> <p>64 France
TIRARD NAUDIN A.A.R.P.I.: Maryse Naudin & Ouri Belmin</p> <p>74 Germany
POELLATH: Dr. Andreas Richter & Dr. Katharina Hemmen</p> <p>83 Gibraltar
ISOLAS LLP: Adrian Pilcher, Emma Lejeune & Stuart Dalmedo</p> <p>91 Greece
Zepos & Yannopoulos: Anna Paraskeva & Eleni Skoufari</p> <p>98 India
AZB & Partners: Anand Shah & Sagar Maru</p> <p>109 Italy
SLCLEX: Andrea Moja & Elisabetta De Rosa</p> <p>117 Japan
Mori Hamada & Matsumoto: Atsushi Oishi & Makoto Sakai</p> <p>124 Liechtenstein
Ospelt & Partner Attorneys at Law Ltd.: Dr. Alexander Ospelt & Philip Raich</p> | <p>133 Luxembourg
Arendt & Medernach: Eric Fort, Max Kremer & Ellen Brullard</p> <p>141 Monaco
GARDETTO LAW OFFICES: Jean-Charles S. Gardetto & Alexandre Al Suleiman</p> <p>148 Netherlands
Arcagna B.V.: Nathalie Idsinga & Wouter Verstijnen</p> <p>155 New Zealand
Cone Marshall Limited: Claudia Shan, Shanna Chen & David Bongkuk Cho</p> <p>165 Poland
Ozog Tomczykowski: Pawel Tomczykowski & Filip Smakowski</p> <p>172 Portugal
Kore Partners: Tiago Cassiano Neves, Julija Petkevica Neves & António Mendes</p> <p>179 Singapore
WongPartnership LLP: Sim Bock Eng, Tan Shao Tong & Aw Wen Ni</p> <p>186 Spain
Monereo Meyer Abogados: Gustavo Yanes Hernández, Christian Krause Moral & Michael Fries</p> <p>193 Switzerland
Walder Wyss Ltd: Philippe Pulfer, Philippe Kohler & Yacine Rezki</p> <p>204 United Arab Emirates
Al Tamimi & Company: Dipali Maldonado & Midya Omar</p> <p>214 United Kingdom
Macfarlanes LLP: Edward Reed & Robin Vos</p> <p>231 USA
Seward & Kissel LLP: Scott M. Sambur, David E. Stutzman & Samuel F. Thomas</p> |
|--|---|

Belgium

Tiberghien



Griet Vanden Abeele



Emilie Van Goidsenhoven



Alain Van Geel

1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Domicile is not a concept in Belgian tax law. Residence is the main connecting factor; see question 1.3.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

See question 1.4.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Residence is relevant to determine the liability of a person to personal income, inheritance and gift taxes in Belgium. Belgian tax residents are subject to personal income tax in Belgium on their worldwide income. Non-residents are only subject to non-resident income tax on Belgian source income.

If a deceased person qualified as a Belgian tax resident at the time of his/her death, Belgian inheritance tax is due on his/her worldwide assets. Non-residents are only subject to inheritance tax on real estate located in Belgium. The residence of the donor(s) is relevant for gift tax (if applicable – see question 2.1).

The residence of the heirs or the beneficiaries is not relevant for inheritance or gift tax purposes.

1.4 If residence is relevant, how is it defined for taxation purposes?

“Residence” has a factual meaning under Belgian law. It is characterised by a certain permanence or continuity, which is independent from the (Belgian concept of) domicile or nationality of a person. It concerns the place where a person lives and works. It is the place where the family is housed, the place where a person stays effectively and permanently or maintains his/her relationships, etc.

There is a first rebuttable presumption that a person registered in the Belgian national register is deemed a Belgian resident for personal income tax purposes. The second presumption is irrefutable and qualifies a person as resident if his/her family is living in Belgium. There are no legal presumptions for inheritance and gift tax purposes.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

The nationality of a person is not relevant for personal income tax and inheritance tax. Nationality can be a relevant tie-breaker rule to determine a person's tax residence for personal income tax purposes (based on the relevant Double Tax Convention (DTC)) and, to a limited extent, inheritance tax (e.g. DTC for inheritance taxes between Belgium and France).

1.6 If nationality is relevant, how is it defined for taxation purposes?

See question 1.5.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

The “seat of fortune” is a relevant connecting factor for personal income, inheritance and gift tax purposes. For personal income tax purposes, this connecting factor only applies in the absence of a Belgian residence. The seat of fortune is an alternative connecting factor for inheritance and gift tax purposes.

The “seat of fortune” is located in Belgium where a private individual is managing or controlling his/her assets from Belgium, even if the assets are not located in Belgium. The localisation of his/her assets in Belgium is a rebuttable presumption for this test. Patrimonial interests as well as general economic interests are relevant for this test.

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

Inheritance tax

Inheritance tax is due by the heirs/legatees on the net amount inherited by each of them from the estate of any deceased person who was a resident of Belgium at the time of death. Please note that inheritance tax is levied by the Regions (the Flemish Region, the Brussels-Capital Region or Walloon Region). The applicable regional inheritance tax depends on the Region where the deceased had his/her residence for the longest period of time, in the five years prior to his/her death. There are differences between the Regions with regard to the tax rates, reduced tax rates and exemptions, etc.

The applicable inheritance tax rate depends on the relationship of the heirs/legatees with the deceased. In the Flemish Region, the maximum inheritance tax rate for (grand)children and partners (e.g. spouses) is 27% (in excess of €250,000). In the Brussels-Capital and Walloon Regions, the maximum tax rate is 30% (in excess of €500,000). For family businesses, a reduced inheritance tax rate of 3% may be claimed (subject to conditions) in the Flemish and Brussels-Capital Regions and an exemption applies in the Walloon Region.

Gift tax

Gifts of moveable property are subject to gift tax if the gift is completed before a Belgian or foreign notary. Informal and indirect gifts (e.g. bank transfers, remission of debts, etc.) are not subject to gift tax, but inheritance tax is due if the donor passes away as a Belgian resident within three years of the gift. Wallonia has increased this period from three years to five for gifts made as of 1 January 2022.

Gift tax rates depend on the applicable regional legislation (following the same connecting factors for inheritance tax). In the Flemish and Brussels-Capital Regions, moveables are taxed at a reduced flat registration rate of 3% for gifts between (grand)parents and (grand)children, and between partners (e.g. spouses). Gifts to other private individuals are taxed at 7%. There is a reduced gift tax rate of 5.5% for private foundations. The Flemish Region recently introduced a tax exemption for charities (which is not applicable to private foundations).

In the Walloon Region, the rate on registered gifts of moveables is 3.3% (gifts between partners (e.g. spouses) and between (grand)parents and (grand)children). The rate is 5.5% for gifts to other individuals. The rates applicable to private foundations or charities depend on the nature of the activities.

Gifts of Belgian real property are subject to progressive tax rates ranging from 3% to 27% between partners (e.g. spouses) and between (grand)parents and (grand)children, in all three Regions. Gifts of foreign real property are tax-exempt.

Please note that exemptions apply upon the gift of a qualifying family business, in all three Regions.

Wealth tax

There is currently no wealth tax applicable to private individuals in Belgium, except for the yearly tax on securities accounts of 0.15%. Only some charities (such as private foundations) are subject to a 0.17% wealth tax.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

Private individuals who become Belgian tax residents are taxed

on their worldwide income at progressive rates. For income year 2022 (tax assessment year 2023), a 50% income tax rate is applicable above a net taxable income of €42,370 per taxpayer, per year. Professional income, and income from immoveable property (such as rental income) are taxed at progressive tax rates.

Several types of income are subject to separate tax rates: the default rate for dividends, interests and royalties is 30% (but reduced rates may apply). A rate of 33% applies to occasional or speculative profits, such as capital gains on shares, realised outside of the normal management of private wealth and which do not qualify as professional income. Municipal surcharges are applicable.

Capital gains on Belgian real estate are taxable depending on the type of property. Capital gains realised on buildings within five years of acquisition are, in principle, taxed at 16.5%. Capital gains realised on Belgian land are taxable at a rate of 33% in the first five years, and at 16.5% between the fifth and eighth years. Speculative capital gains on immoveable property may be taxed at 33%. Municipal surcharges are applicable.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

See question 2.4 (other taxes).

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

VAT

The European VAT Directive is implemented in Belgium. The standard VAT rate is 21% and applies to all goods and services not qualifying for one of the reduced VAT rates. Exemptions may apply. A 12% VAT rate is available for, amongst others, restaurant and catering services (excluding beverages). A 6% VAT rate is available for, amongst others, work on immoveable property (limited in time and subject to strict conditions), basic necessities (for example, food and pharmaceuticals), some printed materials and hotels.

Real estate transfer tax (RETT)

Purchases and transfers of real estate located in Belgium, including buildings (except new buildings, which are subject to VAT) are subject to RETT by the purchaser. The rate depends on the location of the real estate: the default rate is 12.5% of the fair market value in the Walloon and Brussels-Capital Regions. In the Flemish Region, the applicable rate has been 12% since 1 January 2022. Reduced rates are, subject to conditions, available.

Where the purchase or transfer of land is subject to VAT, no RETT will be charged.

Other taxes

Property tax: property tax is assessed on cadastral income (i.e. a deemed rental value attributed to the property by the tax authorities). Rates generally range between 20% and 50% of the “indexed cadastral income”.

Stock exchange tax: is a flat-rate tax that is due on transactions (i.e. purchases and sales) of stocks and bonds as well as on redemptions of capitalisation shares of collective investment vehicles that are executed by Belgian residents through Belgian or non-Belgian financial intermediaries. The tax rates vary from 0.12% to 1.32% and are dependent on the type of transaction.

Yearly tax on securities accounts: a tax on securities accounts of 0.15% (for securities accounts that reach or exceed €1,000,000) was introduced in 2021.

EU customs: regulations are applicable. Excise duties are due on specific types of goods (for example, fuel, alcohol and tobacco).

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

Yes. On 1 January 2015, the “Cayman Tax” was introduced and has been amended substantially as of 1 January 2018. This is a look-through taxation on private individuals and legal entities (subject to the legal entities tax), where income received by a non- or low-taxed legal construct is taxable income for the founder or is taxed on transfer to a third-party beneficiary. The look-through approach entails that the underlying income retains its original qualification, and no effective distribution is required for taxation to occur. Interest received by the legal construct remains interest, dividends remain dividends, and capital gains remain capital gains. The first two categories of income are generally taxed at a flat rate of 30% in Belgium. Capital gains on moveable assets realised by individuals are generally tax-exempt to the extent that they are realised within the normal management of one’s private assets.

There are three types of legal constructs:

- Type 1: arrangements such as trusts.
- Type 2: (a) non-taxed and low-taxed companies; and (b) non-taxed and low-taxed legal entities (e.g. foundations).
- Type 3: legal constructs that relate to a specific type of contractual arrangements, mainly insurance constructs.

The look-through approach is combined with taxation of income received (or deemed to be received) from legal constructs. Complex rules aim to prevent double taxation of this combined approach, but due to the complexity, this aim is not always reached.

The founder can avoid pass-through treatment by showing that the legal construct meets a substance test in the case of (among other requirements) the exercise of actual economic activities which may not involve the management of the private assets of (one of) the founder(s).

The Cayman Tax does not only apply to offshore legal constructs, but also to companies and legal entities established within the EEA in the case such entities are not sufficiently taxed.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Yes. A General Anti-Abuse provision is applicable in income tax as well as inheritance and gift tax. Under the General Anti-Abuse Rule (GAAR), a (set of) legal act(s) is/are not enforceable *vis-à-vis* the tax authorities in the case of tax abuse. Tax abuse occurs where the taxpayer avoids taxes or claims a tax benefit, by placing himself/herself in a position that goes against the objective of the provision introducing the tax or tax benefit. The tax administration has to prove that the act or set of legal acts was chosen by the taxpayer in view of obtaining a tax advantage. The taxpayer can prove that he/she had non-tax motives for the (set of) legal act(s).

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

Yes. Belgium has implemented Directive 2018/822/EU of 25 May 2018 amending Directive 2011/16/EU with regard to the automatic and mandatory exchange of information in the field of reportable cross-border arrangements.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

Depending on the circumstances, it may be recommended to

make gifts of specific types of moveable assets before moving to Belgium, as certain types of assets can no longer be given without payment of gift tax. Gift tax is not due on gifts of moveable assets by non-residents.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Belgium does not provide a step-up in basis for shares in companies (Belgian-based or based abroad). Pre-migration planning is recommended to avoid potential double taxation; for example, by incorporating a personal holding company prior to moving to Belgium.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

Belgium has introduced a 0.15% yearly tax on (Belgian and foreign) securities accounts held by private individuals residing in Belgium or legal entities established in Belgium. The tax also applies, in principle, to Belgian securities accounts of non-resident private individuals or companies (unless prevented by the relevant double taxation treaty). Anti-avoidance measures exist and an assessment is advised before entering Belgium.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

Income tax

Moveable investments:

- Capital gains on shares in companies with seat of effective management in Belgium are, in principle, free of income tax provided that the capital gain is realised within the normal management of one’s private wealth. The capital gain is taxed otherwise at a rate of 33% (increased with additional municipal tax calculated on the tax due). Please note that this provision is set aside by the relevant double taxation treaty but may be relevant in the absence of treaty protection.
- Belgian source dividend income is taxed at a general domestic withholding tax rate of 30%. Reduced internal rates may apply. Pursuant to the relevant double taxation treaty, the 30% domestic withholding tax rate is limited to 15%.
- Belgian source interest income is also taxed at a domestic withholding tax rate of 30%. Reduced internal rates may apply. Pursuant to the relevant double taxation treaty, the rate may be reduced to 10%.

Immoveables:

- A non-resident taxpayer is liable to property tax on the cadastral value of his/her Belgian property (provided that the property is not rented). Reporting obligations may apply if the property is rented (exceptions do apply).
- Capital gains on Belgian real estate are taxable depending on the type of property; see question 2.2.

For non-residents, the applicable investments municipal tax is set at 7%.

Inheritance and gift tax

Inheritance tax also arises on the death of a Belgian non-resident who leaves real property located in Belgium. Belgian inheritance tax is chargeable on the gross value of the property (debts incurred for the acquisition or maintenance of real property are deductible subject to conditions).

Belgian gift tax is applicable in the case of donation of real property by a non-resident. See question 2.1 for the applicable rates.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

No import taxes are applicable on import from within the EU. Import taxes are EU-regulated.

4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

See question 2.4 (RETT).

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

A legal entity qualifies as a Belgian resident for corporate income tax purposes if it has its registered seat, main establishment or place of effective management in Belgium (“real seat” doctrine).

Although in company law the “registered seat” doctrine has been the rule since the company law reform of 2019, for tax purposes, the “real seat” theory remains applicable (regardless of the company’s country of incorporation).

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

The main tax liabilities payable by a corporation in Belgium are the corporate income taxes annually due. The tax base of a company subject to Belgian corporate income tax is determined on an accrual basis and consists of the company’s worldwide income less allowed deductions. For corporate income tax purposes:

- it is assumed that all income received by a company is business income; and
- in line with international tax rules, the income from foreign countries can be exempted from tax in Belgium further to the application of a double tax treaty concluded between Belgium and the income source state.

The standard corporate income tax rate is 25%. It should be noted that companies qualifying as small and medium-sized enterprises can benefit from a decreased corporate income tax rate of 20% on their first part of the tax base of €100,000 (if specific conditions are met).

5.3 How are branches of foreign corporations taxed in your jurisdiction?

A foreign corporation having a branch in Belgium can be subject to non-resident corporate income tax on the revenues derived from the Belgian branch if it qualifies as:

- a “permanent establishment” under the double tax treaty concluded between the state of residence of the foreign company and Belgium; or
- a “Belgian establishment” under Belgian domestic law if Belgium did not enter into a double tax treaty with the state of residence of the foreign company.

The Belgian internal tax definition of a “Belgian establishment” is much broader than the “permanent establishment” definition of the double tax treaty. In line with generally accepted international tax principles, the provisions of the double tax treaty prevail over Belgian domestic law.

The tax base of a foreign corporation subject to non-resident corporate income tax is determined as for resident corporations but limited to the revenues derived from the Belgian branch.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Belgium has entered into double tax treaties with around 100 countries. Their impact is to limit the possibility of double taxation of persons liable to pay taxes in Belgium and the other country. The double tax treaties also address and limit the rate of withholding tax otherwise applicable at source in respect of, amongst others, dividend, interest and royalty payments to recipients outside of Belgium.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

The vast majority of double tax treaties concluded between Belgium and foreign countries follow the OECD Model Convention.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Yes. Belgium is a party to double taxation treaties regarding inheritance tax with France and Sweden.

The double taxation treaty with Sweden was entered into in January 1956. As Sweden has abolished inheritance taxes, the double tax treaty is of no practical relevance in Belgium.

The double tax treaty with France was entered into in January 1959 and remains applicable to date.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

No, they do not.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

The European Succession Regulation (ESR) applies to the succession of persons who passed away on or after 17 August 2015. According to the ESR, the law applicable to a persons’ worldwide estate depends on the deceased’s habitual residence at the time of his/her death, unless the deceased was manifestly more closely connected with another state. In the latter case, the succession law of that other state applies. However, a person may choose the law of the state whose nationality he/she possesses at the time of making the choice or at the time of death.

According to the ESR, the admissibility and substantive validity of a Will is governed by the law, which would have been applicable to the succession, if the deceased had died on the day on which the Will was made. This is either the law of the deceased’s habitual residence, or that following a valid choice of law. A Will shall be formally valid if it complies with the law of one of the following connecting factors, e.g. the state in which the Will was made, the testator’s nationality, the state in which the testator had his/her domicile or habitual residence, etc.

We note that the Hague Testamentary Dispositions Convention prevails over the provisions of the ESR with regard to the formal validity of a Will.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

There are no particular rules for Belgian or foreign real estate. See question 7.1 for the principles.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

A person can make a Will insofar as the person has the legal capacity to perform judicial acts, has reached the age of 16 and, under certain conditions and if applicable, is under adult guardianship. Moreover, a Will can only be made if the person is sound of mind.

Under Belgian law, a person can, in principle, freely dispose of his/her assets. However, the testator's descendants and surviving spouse have the right, under forced heirship rules, to claim a well-defined share in the estate. Descendants are all together equally entitled to half of the estate. The usufruct of half of the estate can be claimed by the surviving spouse. We note that the extent of the descendants' and surviving spouse's claim depends on the calculation mass. This includes the assets of the deceased at the time of his/her death, minus his/her debts, including the donations he/she has made during his/her lifetime. If a descendant or the surviving spouse invoke the forced heirship rules, they will be entitled to a monetary claim on the other heirs or third parties. Since the new inheritance law's entry into force on 1 September 2018, an heir no longer has a claim *in rem* on the deceased's assets. Please note that it is currently possible to enter into an inheritance agreement under Belgian inheritance law to mitigate the impact of forced heirship rules, provided that certain conditions are met.

8 Powers of Attorney

8.1 In your jurisdiction, can an individual create a power of attorney which continues to be effective after the individual has lost capacity?

Yes, a person can create powers of attorney. "Normal" proxies end automatically when the principal becomes incapacitated. However, a person can also take up the form of a "care proxy", drafted with the specific purpose of managing the principal's personal and patrimonial interests when he/she loses capacity. Both the normal proxy and the care proxy can be included in one document. The care proxy differs from a "normal" proxy and only enters into force when the principal becomes incapacitated. The proxy can be drafted both under the form of a private document or an authentic document. No judicial intervention is needed. However, a judge can be asked to rule on the care proxy, and add or alter the settlement provided therein, or can even replace the private proxy by appointing an administrator.

8.2 To what extent would such a power of attorney made by an individual in their home jurisdiction be effective to allow the attorney to deal with assets belonging to the individual which are located in your jurisdiction?

From a Belgian international private law perspective, protective measures are governed by the laws of the state where the person to be protected holds their habitual residence at the time of the

agreement or act, unless a choice of law has been made. The applicable law can be the:

- Laws of the state of which the adult is a national.
- Laws of the state of a former habitual residence of the adult person.
- The laws of a state in which the adult person's property is located (although, in this case, the choice of law is limited only in relation to that property).

Foreign care proxies with lasting powers of attorney, established in a notarial deed, will in principle be recognised in Belgium.

9 Trusts and Foundations

9.1 Are trusts recognised/permitted in your jurisdiction?

Trusts do not exist under Belgian law. Nevertheless, Belgian conflict-of-law rules provide for an autonomous definition of a trust, rules governing jurisdiction, and applicable law to foreign trusts.

9.2 How are trusts/settlers/beneficiaries taxed in your jurisdiction?

The Cayman Tax (introduced on 1 January 2015, with subsequent amendments) is applicable to Belgian tax residents who are either the founder or third-party beneficiary of legal constructs such as a trust. A trust is generally qualified as a legal construct of type 1. See question 2.5.

9.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

Forced heirship rules can have an impact on inheritance planning (see question 7.3). If the trust is set up by a Will, the trustee must ask the protected heirs to hand over the assets to him/her, and they may refuse in the case of infringement of their forced heirship rights. If the deceased sets up the trust in a trust deed before death, forced heirship may have an impact on such a transfer.

9.4 Are private foundations recognised/permitted in your jurisdiction?

Yes. The Belgian private foundation was introduced in 2002 and is now governed by the rules in the Belgian Code on Companies and Associations. Foreign private foundations are recognised as well.

9.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

Belgian private foundations are subject to legal entities tax (if they engage in commercial/economic activities in more than an accessory manner, a private foundation could be subject to corporate income tax). Being subject to tax on legal entities implies that only certain income categories will be subject to income tax (such as dividend and interest income (default rate of 30%)).

A private foundation pays a yearly tax of 0.17% on the total of its assets on 1 January, unless this total amounts to less than €25,000. Debts (besides certain exceptions, e.g. operational costs) are not deductible.

The private foundation is also subject to the other taxes mentioned in question 2.4.

9.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

The same rules as mentioned under question 7.3 apply.

10 Matrimonial Issues

10.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Yes, both are permitted and recognised under Belgian law.

10.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

There are three permitted and recognised matrimonial property regimes:

- 1) A full community property regime: all assets acquired during the marriage are part of the community of property.
- 2) A regime of separation of assets combined with a limited community of assets acquired during marriage: this is the default system under Belgian law. If spouses do not choose another regime *expressis verbis*, then this regime will apply. This regime entails a separation between the joint assets and the personal assets of each spouse. The joint assets include earned income, which is essential to this regime. Assets that were acquired prior to the marriage or donations/bequests made in favour of one spouse are personal assets of the spouse.
- 3) The regime of separation of property: each spouse remains entitled to their own personal assets (including earned income). There are no joint assets; at most, there are undivided assets held by each spouse for an equal part. Correction mechanisms are possible under the separation of property regime.

10.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Yes, they are, but they both need to be formalised in a notarial deed.

10.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

In the case of a divorce, there may be alimony rights towards the ex-spouse and towards the children. When one spouse is in need, the court can grant alimony, taking into account the specific circumstances of the case. Spousal alimony can be paid for the period of the marriage (or until there is a new partnership). The amount of spousal alimony is limited to a third of the income of the spouse who is liable to pay for alimony. During the marriage, spouses cannot renounce their right to alimony. During the divorce proceedings, an agreement can be reached and alternative arrangements are possible. Besides the spousal alimony, there is also child alimony. Normally, this is a duty to support the children, including after the age of majority if the education is not completed by that time.

11 Immigration Issues

11.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Non-EU/EER/Swiss individuals need to have the required residence and/or work permits.

11.2 Does your jurisdiction have any investor and/or other special categories for entry?

Currently there are no “investment programmes” in place.

11.3 What are the requirements in your jurisdiction in order to qualify for nationality?

For private individuals (above 18 years of age), Belgian nationality can be acquired by naturalisation (in exceptional cases) or declaration of nationality. The latter is possible for five categories of people:

- 1) adults born in Belgium and who have legally and mainly resided there since their birth;
- 2) adults having legally and mainly resided in Belgium for five years;
- 3) adults having legally and mainly resided in Belgium for five years and who are married to a Belgian or who have a minor Belgian child;
- 4) adults having legally and mainly resided in Belgium for five years and who have reached the age of retirement or who suffer from a disability or invalidity preventing him/her from working; and
- 5) adults having legally and mainly resided in Belgium for 10 years.

Other conditions may include a legal and principal residence in Belgium for a number of years, the knowledge of (one of) the national language(s) and social and/or economic integration.

11.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

No; see question 1.5.

11.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

Currently, there are no programmes designed to attract foreigners to become resident or citizen of Belgium.

However, in Belgium, a special tax regime exists for inbound taxpayers, under which up to 30% of the individual's salary, with a maximum of €90,000, and some other exceptional expenses, can be paid free from tax and social security as a cost proper to the employer. This regime can be applied for five years, extendable by three additional years. Note that this regime is subject to fulfilling certain conditions.

As a grandfathering measure, a special expatriate tax regime also exists (until the end of 2023) for foreign executives temporarily working in Belgium for an international group. The individual is deemed Belgian tax non-resident and is therefore solely taxable on Belgian source income. Furthermore, the interesting benefits include the reduction of the taxed salary of the expatriate by the non-taxation of the activities performed outside Belgium and the non-taxation of (deemed) cost allowances.

12 Reporting Requirements/Privacy

12.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Most income tax treaties include a provision for the exchange of information upon request and Belgium has entered into several individual Tax Information Exchange Agreements (TIEAs). The EU Directive on Administrative Cooperation in the Field of Taxation (with several updates), the OECD Common Reporting Standard (over more than 100 countries) and the US-BE FATCA Agreement also apply.

12.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

Since 1 January 2015, a look-through tax (the Cayman Tax) has been in effect (see question 2.5). The Cayman Tax requires the founder to report a qualifying legal construct in their personal income tax return. Substantial penalties apply: €6,250 per omission per legal construct per year.

12.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Belgian resident entities are registered in the (public) so-called Crossroads Bank for Enterprises (CBE) (*Kruispuntbank voor Ondernemingen/Banque-Carrefour des Entreprises*).

As a result of the implementation of the EU Anti-Money Laundering Directive(s) into Belgian law, companies, associations, foundations, trusts and similar structures are obliged to supply information and documents (supporting the UBO analysis) regarding their “Ultimate Beneficial Owners” (UBOs) to a centralised database, the “UBO register”. Not only the UBO, but also the “competent authorities”, including the tax authorities and the reporting entities in the framework of client surveys (e.g. accountants, notaries, etc.) can consult the information incorporated in the UBO register. Furthermore, citizens have paid access to certain information regarding the UBOs in the register. Annual confirmation that the UBO registration is still up to date is also required.

Disclaimer

This chapter contains information of a general nature, which is partly based on information provided by independent third parties. Although it has been compiled with the utmost care, it must not be regarded as legal and/or tax advice, and one should not automatically apply it to any related matter one might have without first receiving appropriate legal and/or advice. Tiberghien will not be held responsible for the use of this information or any consequences of such use. Moreover, the content of this chapter must not be distributed without the permission of its authors. We invite you to contact our lawyers if you have any specific questions on this subject matter.



Griet Vanden Abeele has been a partner at Tiberghien since 2018. Her professional focus lies on the interaction between corporate tax and estate planning, combined with national and international income tax. She has more than 15 years' experience and a substantial network in cross-border planning in relation to the Netherlands, Luxembourg, Switzerland and the UK. Griet provides high-level advice to private individuals, families and their businesses in a national and international context, including family governance.

Griet is a member of the Brussels Bar, a member of the Estate Planning Skill Group (ESPG) and a full member of STEP. She writes both scientific and general articles on tax, is co-author of the *Tiberghien Tax Manual* and is a regular speaker at (inter)national seminars. Before joining Tiberghien, she worked for the Private Client Department of Loyens & Loeff (since 2009). Griet was recommended by *The Legal 500* as a "Next Generation Lawyer" in 2020. She was recommended in *Who's Who Private Client 2021*.

Tiberghien

Avenue du Port 86C B.419
BE1000 Brussels
Belgium

Tel: +32 2 773 40 00
Email: griet.vandenabeele@tiberghien.com
URL: www.tiberghien.com



Emilie Van Goidsenhoven has been a partner at Tiberghien since 2020. She advises Belgian and foreign HNW individuals and (their) family businesses on direct taxation, international mobility and (inter)national estate planning. Her practice regarding family businesses includes, next to her tax expertise, the setting up of the appropriate corporate and/or family governance to ensure the right balance between the families and their businesses. She is also a certified family mediator.

Emilie has more than 10 years of experience, thorough expertise and a large professional network in French-Belgian tax matters, especially real estate investments, the migration of HNWI's and estate planning. Emilie is a member of the Brussels Bar and a full member of STEP. She is president of the Estate Planning Skill Group (ESPG) and co-responsible for its French-Belgian branch (Paris-Bruxelles-Lille). She writes articles on tax, is co-author of the *Tiberghien Tax Manual* and is a regular speaker at various private client seminars. *Chambers* ranks Emilie as a "notable practitioner": a "brilliant lawyer" who is "up and coming through the practice".

Tiberghien

Avenue du Port 86C B.419
BE1000 Brussels
Belgium

Tel: +32 2 773 40 00
Email: emilie.vangoidsenhoven@tiberghien.com
URL: www.tiberghien.com



Alain Van Geel has been a partner at Tiberghien since 2007. He mainly focuses on Belgian and international family law, matrimonial property law, gifts and donations, inheritance law and the law of succession, as well as (national and international) estate planning, with particular attention to the aspects of Belgian and international civil law.

Alain has more than 25 years' experience. He has an extensive (inter)national network and is highly valued by peers, private bankers and notaries. Alain is a member of the Brussels Bar, a full member of STEP and a valued keynote speaker at professional seminars and events. He is a member of the editorial staff of the "*Nieuwsbrief notariaat*". He lectures at the UAMS (Antwerp Management School), the Flanders Business School and the Belgian private banking association on (inter)national estate planning and Belgian international private law. Alain is called a "notable professional" in the *Chambers* HNWI Band 1 rankings 2022: "An absolute powerhouse on family inheritance matters in Belgium... [t]he scope of his expertise is very impressive. He has a very wide knowledge." He is also recognised as a "recommended lawyer" in *The Legal 500 EMEA* (2020 edition). *Who's Who Legal 2021* calls Alain a "Thought Leader" in "Private Client". He is a regular speaker at seminars and author of several estate planning-related articles in Belgian periodicals.

Tiberghien

Avenue du Port 86C B.419
BE1000 Brussels
Belgium

Tel: +32 2 773 40 00
Email: alain.vangeel@tiberghien.com
URL: www.tiberghien.com

Tiberghien is a boutique tax law firm specialising in all domains of taxation and related legal practice areas, such as family (patrimonial) law and inheritance law. We work for corporate, private and institutional clients.

With approximately 110 (tax) lawyers in four Belgian offices, a history of more than 80 years and a strong reputation, Tiberghien is by far the largest and the oldest independent tax practice at the Belgian Bar. Tiberghien also has offices in Luxembourg.

Tiberghien's specialty lies in a multidisciplinary, service-oriented approach of tax, both in a national and international context. We provide advice, mediation, negotiation and litigation services in tax and related legal practice areas.

We also offer economic advice (e.g. on valuations), tax compliance and family governance. Tiberghien is internationally recognised as a Tier 1 law firm by *The Legal 500* and *Chambers HNWI* and can rely on a large network of best-friend law firms around the globe.

www.tiberghien.com

Tiberghien.
Advocaten / Avocats / Lawyers

ICLG.com



Current titles in the ICLG series

Alternative Investment Funds	Franchise
Anti-Money Laundering	Gambling
Aviation Finance & Leasing	Insurance & Reinsurance
Aviation Law	International Arbitration
Business Crime	Investor-State Arbitration
Cartels & Leniency	Lending & Secured Finance
Class & Group Actions	Litigation & Dispute Resolution
Competition Litigation	Merger Control
Construction & Engineering Law	Mergers & Acquisitions
Consumer Protection	Mining Law
Copyright	Oil & Gas Regulation
Corporate Governance	Patents
Corporate Immigration	Pharmaceutical Advertising
Corporate Investigations	Private Client
Corporate Tax	Private Equity
Cybersecurity	Product Liability
Data Protection	Project Finance
Derivatives	Public Investment Funds
Designs	Public Procurement
Digital Business	Real Estate
Digital Health	Renewable Energy
Drug & Medical Device Litigation	Restructuring & Insolvency
Employment & Labour Law	Sanctions
Enforcement of Foreign Judgments	Securitisation
Environment & Climate Change Law	Shipping Law
Environmental, Social & Governance Law	Technology Sourcing
Family Law	Telecoms, Media & Internet
Fintech	Trade Marks
Foreign Direct Investment Regimes	Vertical Agreements and Dominant Firms