DOCTRINE

Beleggingsfondsen[1] Belgisch rapport n.a.v. het 73ste IFA-Congres te London, U.K. (9-12 september 2019) (Investment funds)

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SAMENVATTING

Voor de Belgische inkomstenbelastingen moeten niet-transparante fondsen (beleggingsvennootschappen met rechtspersoonlijkheid) worden onderscheiden van transparante fondsen. Binnen de categorie van de Belgische publieke beleggingsvennootschappen zijn er de UCITS fondsen (met EU-paspoort), de alternatieve publieke beveks en de Belgische publieke privaks. De Belgische institutionele bevek is enkel toegankelijk voor "in aanmerking komende beleggers" (fysieke personen vallen hier niet onder).

De private privak is een private beleggingsvennootschap voor belegging in niet-genoteerde bedrijven, en mag geen openbaar bod doen m.b.t. de door haar uitgegeven aandelen.

De vastgoedbevak, de gespecialiseerde vastgoedbeleggingsfondsen en de gereglementeerde vastgoedvennootschappen beogen investeringen in vastgoed.

Voormelde types Belgische beleggingsvennootschappen zijn onderworpen aan de Belgische vennootschapsbelasting, doch genieten van een bijzondere belastbare grondslag voorzien door artikel 185bis, § 1 en 2 WIB 1992. De eigenlijke inkomsten genoten door de beleggingsvennootschap worden niet in aanmerking genomen, maar belastbare grondslag wordt gegenereerd indien de beleggingsvennootschap abnormale of goedgunstige voorwaarden ontvangt, alsook ten belope van de niet als beroepskosten aftrekbare uitgaven en kosten andere dan i) waardeverminderingen en minderwaarden op aandelen, en ii) het in artikel 198/1 bedoelde niet als beroepskosten aangemerkte financieringskostensurplus.

Belgische dividenden ontvangen door een beleggingsvennootschap ondergaan in algemene regel 30% roerende voorheffing. Een vrijstelling van roerende voorheffing m.b.t. Belgische dividenden is beschikbaar indien een participatie van minstens 10% gedurende een ononderbroken periode van minstens één jaar wordt aangehouden (art. 106, § 6 KB/WIB 1992). Wanneer Belgische roerende voorheffing op Belgische dividenden van toepassing is, dan is deze niet verrekenbaar noch terugbetaalbaar indien de bijzondere belastbare grondslag voorzien door artikel 185bis WIB 1992 van toepassing is.

Een private privak komt enkel in aanmerking voor de beperkte belastbare grondslag voorzien door artikel 185bis WIB 1992 indien deze compliant is met de regels eigen aan zijn statuut, en mits bepaalde voorwaarden te voldoen inzake de aangehouden beleggingen. Indien de relevante voorwaarden niet voldaan zijn, dan is de private privak onderworpen aan het gemeenrechtelijk regime in de vennootschapsbelasting, zonder dat voldaan moet zijn aan de minimum drempel van 10% dan wel 2.500.000 EUR aanschaffingsprijs om te kunnen genieten van DBI-aftrek en/of vrijstelling van gerealiseerde meerwaarden op aandelen.

De beperkte belastbare grondslag is ook van toepassing op kwalificerende vastgoedbeleggingsfondsen.

Belgische beleggingsfondsen zonder rechtspersoonlijkheid zijn niet onderworpen aan vennootschapsbelasting, en genieten een fiscaal transparante behandeling.

Dividenden uitgekeerd door een Belgische vennootschap aan een buitenlands beleggingsfonds leiden in algemene regel tot 30% Belgische roerende voorheffing. Buitenlandse beleggingsfondsen zonder rechtspersoonlijkheid zullen doorgaans de voordelen voorzien door het Belgische dubbelbelastingverdrag niet te kunnen toepassen. Buitenlandse beleggingsvennootschappen die in hun thuisland aan een regime van vennootschapsbelasting onderworpen zijn, ook al betreft het een bijzonder regime met een beperkte belastbare grondslag, zullen doorgaans het relevante dubbelbelastingverdrag kunnen inroepen. Voor buitenlandse beleggingsvennootschappen die in hun thuisland een vrijstelling van vennootschapsbelasting genieten is dit thans minder duidelijk, gelet op de recente rechtspraak (hof van beroep te Brussel) waarin beslist werd dat de toepassing van de Belgische ICB-taks op Luxemburgse publieke sicavs in strijd is met het Belgisch-Luxemburgs dubbelbelastingverdrag.

Een Belgisch of buitenlands publieke beleggingsvennootschap waarvan de aandelen genoteerd zijn is algemeen gesproken onderworpen aan dezelfde fiscale regels als niet-genoteerde publieke beleggingsvennootschappen met voor het overige dezelfde juridische kenmerken.

Inkomsten uit Belgisch vastgoed ontvangen door een buiten-

1. This article is a transcript of the Belgian report for the 2019 London Congress of the International Fiscal Association (first published in *Cah.dr.fisc.int.* 2019, vol. 104b, p. 143-166; see p. 7 and ff. for the scope and focus of the national reports).
2. Advocaat Tiberghien.

lands vastgoedfonds zal in principe volgens de gemeenrechtelijke regels voor niet-inwoners vennootschappen worden belast.

Belgische corporate investeerders in buitenlandse beleggingsvennootschappen die vrijgesteld zijn van inkomstenbelasting in hun thuisland worden uitgesloten van de deelnemingsvrijstelling in België. Dit is ook het geval indien de beleggingsvennootschap onderworpen is aan een bijzonder regime van vennootschapsbelasting, tenzij er een statutaire verplichting is om minstens 90% van de netto-inkomsten jaarlijks uit te keren. Onder bepaalde voorwaarden gelden bijzondere regels voor uitkeringen door private equity fondsen en door Belgische vastgoedfondsen.

Dividenduitkeringen door Belgische beleggingsvennootschappen ondergaan in principe 30% roerende voorheffing. Bijzondere regels gelden evenwel voor Belgische private equity fondsen. Inkoop- en liquidatieboni uitbetaald door een beleggingsvennootschap onderworpen aan een bijzonder regime in haar thuisland zijn in principe vrijgesteld van roerende voorheffing, en van belastingheffing in de personenbelasting en rechtspersonenbelasting. Voor fysieke personen geldt een belangrijke uitzondering op de vrijstelling: indien de beleggingsvennootschap minstens 10% (25% indien de effecten van de beleggingsvennootschap werden verkregen uiterlijk op 31 december 2017) van haar activa belegt in schuldvorderingen en/of schuldinstrumenten, dan is de rentecomponent belastbaar ten belope van 30%; dit geldt ook in geval van een overdracht onder bezwarende titel van de aandelen of deelbewijzen in het fonds.

Onder bepaalde voorwaarden kan een Belgisch rijksinwoner (fysieke persoon) of een belastingplichtige in de rechtspersonenbelasting m.b.t. de inkomsten van een buitenlandse (laag belaste) beleggingsvennootschap belastbaar zijn op grond van de zogeheten kaaimantaks. Voor wat publieke, institutionele en genoteerde beleggingsvennootschappen betreft kan de kaaimantaks überhaupt enkel van toepassing zijn indien het een "fonds dédié" fonds of compartiment betreft. Met betrekking tot beleggingsvennootschappen gevestigd in de EER is de kaaimantaks enkel van toepassing onder de voorwaarden van het EER-KB.

RESUME

Pour l'impôt sur le revenu belge, il faut distinguer les fonds opaques (société d'investissement à personnalité morale) des fonds transparents. Parmi les sociétés d'investissement publiques, il y a les fonds UCITS, les sicavs alternatives publiques et les pricafs publiques. La sicav institutionnelle belge est uniquement accessible pour les investisseurs éligibles (les personnes physiques ne qualifient pas en tant que tels). La pricaf privée est une société d'investissement pour investir dans des entreprises non cotées, et ne peut pas faire d'offre publique relative aux actions émises par elle.

La Sicafi, le FIIS ("fonds d'investissement immobilier spécialisé") et la SIR ("société immobilière réglementée") ont pour vocation d'investir dans l'immobilier.

Les types de sociétés d'investisement belges précitées sont soumis à l'impôt de sociétés, mais profitent d'une base imposable particulière prévue par l'article 185bis, § 1er et 2, CIR 1992. Les revenus perçus par la société d'investissement ne sont pas pris en compte en tant que tels, mais la base imposable est limitée au montant total des avantages anormaux ou bénévoles reçus et des dépenses et charges non déductibles à titre de frais professionnels autres que i) des réductions de valeur et moins-values sur actions ou parts, et ii) des surcoûts d'emprunt visés à l'article 198/1 CIR 1992.

Les dividendes belges perçus par une société d'investissement subissent en principe 30% de précompte mobilier. Une exemption de précompte mobilier relative aux dividendes belges est disponible si une participation de minimum 10% est détenue pendant une période ininterrompue d'un an au moins (art. 106, § 6, AR/CIR 1992). Quand le précompte mobilier a été appliqué à des dividendes belges, celui-ci n'est pas imputable ni remboursable si la base d'imposition prévue par l'article 185bis CIR 1992 s'applique.

Une pricaf privée bénéficie uniquement de la base imposable limitée prévue par l'article 185bis CIR 1992 si elle est en conformité avec les règles propres à son statut, et pour autant que certaines conditions relatives aux investissements détenus sont remplies. Si les conditions pertinentes ne sont pas remplies, la pricaf privée sera soumise au régime de l'impôt de sociétés de droit commun, sans qu'il ne faille toutefois remplir le seuil minimal de 10% ou la valeur d'acquisition minimale de 2.500.000 EUR afin de pouvoir appliquer la déduction RDT et/ou l'exemption de plus-values réalisées sur actions.

La base imposable limitée s'applique également aux fonds immobiliers précités.

Les fonds d'investissement sans personnalité juridique belges ne sont pas soumis à l'impôt de sociétés, et sont soumis à un régime de transparence fiscale.

Dividendes distribués par une société belge à un fonds étranger sont en règle générale soumis au précompte mobilier au tarif de 30%. Les fonds étrangers sans personnalité juridique ne pourront en général pas appliquer les taux réduits prévus par les conventions de double imposition. Les sociétés d'investissement qui sont soumises à un régime d'impôt de sociétés, même s'il s'agit d'un régime particulier avec une base imposable limitée, pourront en principe appliquer les conventions de double imposition. Pour les sociétés d'investissement étrangères à personnalité juridique distincte qui bénéficient d'une exemption d'impôt de sociétés, ceci est par contre moins clair à l'heure actuelle, étant donné la jurisprudence récente de la cour d'appel de Bruxelles qui soutient que l'application de la taxe belge sur les OPC aux sicavs publiques luxembourgeoises est contraire à la convention de double imposition belgo-luxembourgeoise.

Une société d'investissement belge ou étrangère publique dont les actions sont cotées est de façon générale soumise aux mêmes règles fiscales qu'une société d'investissement non cotée ayant les mêmes caractéristiques.

Les revenus immobiliers d'origine belge perçus par une société immobilière étrangère seront en règle générale soumis aux

règles fiscales de droit commun pour non-résidents sociétés. Des investisseurs sociétés belges qui investissent dans des sociétés d'investissement étrangères qui sont exemptées d'impôt sur le revenu dans leur pays de résidence sont exclus de l'exemption mère-fille en Belgique. Ceci vaut également pour des investissements dans des sociétés d'investissement qui sont soumises à un régime d'imposition dérogatoire de droit commun dans leur pays de résidence, à moins qu'il n'y ait une obligation de distribution obligatoire d'au moins 90% des revenus nets sur base annuelle. Sous certaines conditions, des règles particulières pour les distributions par des fonds private equity ainsi que les fonds immobiliers.

Les distributions par les sociétés d'investissement belges subissent en principe 30% de précompte mobilier. Des règles particulières s'appliquent toutefois aux fonds private equity belges. Les bonis de rachat et de liquidation distribués par une société d'investissement soumise à un régime particulier dans le pays de résidence sont en principe exemptés de précompte mobilier et d'imposition à l'impôt personnes physiques et à l'impôt pour personnes morales. Il y a toutefois une dérogation importante pour les personnes physiques: si la société d'investissement investit au moins 10% (25% si les parts ont été acquises au plus tard le 31 décembre 2017) de ses actifs dans des créances et/ou des titres qui représentent des créances, la composante d'intérêt est imposable au taux de 30%. Ceci vaut également en cas de cession des parts du fonds à titre onéreux.

Sous certaines conditions, un habitant du Royaume (personne physique) ou un contribuable à l'impôt pour personnes morales est soumis à un régime de transparence fiscale par rapport aux revenus encaissés par une société d'investissement sur la base des règles de la taxe caïman. Pour les sociétés d'investissement publiques, institutionnelles et cotées, la taxe caïman peut uniquement s'appliquer lorsqu'il s'agit d'un fonds ou d'un compartiment "fonds dédié". En ce qui concerne les sociétés d'investissement établies à l'intérieur de l'EEE, la taxe caïman s'applique uniquement sous les conditions de l'AR/EEE.

I. Part One: Taxation of investment funds

A. Widely held investment funds

1. Belgian "public" funds

a) Investment companies

A "public undertaking for collective investment" or "public investment company" is defined as a fund which collects capital in Belgium or abroad by means of public offering of financial instruments. According to the Belgian rules, an offering is public as soon as securities are offered to at least 150 individuals or legal entities who do not qualify as "professional investors". If the minimum investment amounts to 100,000 EUR per investor and per category of shares, there can never be a public issue of shares in a closed-end undertaking. If the minimum investment amounts to 250,000 EUR per investor and per category of shares, there is never a public issue of an open-end undertaking.

Sicavs (open-end) which qualify for Directive 2009/65/EC are subject to regulations concerning their registration with the Belgian financial authorities (FSMA), management company, custodian, supervisory by the Belgian FSMA, rules regarding statutory auditor, prospectus, KIID, etc. Alternative public Sicavs (open-end), which do not qualify for Directive 2009/65/EC, are subject to similar detailed regulations. Belgian public privaks (closed-end) are intended for investing in non-listed companies.

With respect to the applicable accounting rules, both aforementioned types of open-end public Sicavs are subject to the Royal Decree of 10 November 2006. The assets of the investment companies are recorded at fair market value. Unrealised capital gains and unrealised capital losses are recorded in the P&L of the Sicavs.

The annual accounts of public privaks have to be made according to IFRS rules.

The investment companies referred to above are subject to Belgian corporate income tax. Subject to registration with the FSMA, they benefit from a limited tax base provided by article 185*bis*, § 1 and 2 ITC (see below).

The limited tax base implies that neither recurrent income (dividends, interest) nor capital gains are taken into account for determining the tax base. Corporate tax exposure may however e.g. be triggered should the investment company incur "disallowed expenses" such as expenses regarding restaurants or reception costs. The following is never included in the limited tax base: i) capital losses on shares, and ii) interest payments which are not deductible on the basis of the EBITDA rules. The applicable rate is 29.58% (25% as of assessment year 2021). In practice the tax base is very limited, at least for investment companies investing in securities.

Moreover, Sicavs and public privaks are also subject to the special tax of 100% if certain qualifying payments have not been properly documented by means of payment slips.

As a general rule, movable income (interest or dividend) with a Belgian debtor is subject to 30% Belgian withholding tax. Moreover, Belgian withholding tax (30%) has to be levied where a Belgian "paying agent" (e.g. Belgian bank) intervenes in the pay-out of a foreign-sourced movable income. For a number of qualifying investment companies – amongst others, public Sicavs and public privaks – a specific exemption from withholding tax on in-bound movable income (other than Belgian dividends) is available on the basis of article 116 RD/ITC.

Subject to a number of conditions, a Belgian company is entitled to credit Belgian withholding tax incurred on collected income. If the creditable withholding tax would exceed the corporate tax liability of a company, the excess is reimbursable. According to article 123 RD/ITC, withholding taxes

only create a tax credit in the hands of the beneficiary of the income, provided that such income is included in the taxable income of the taxpayer. Before the Act of 30 July 2013, article 185*bis*, § 2 ITC, provided explicitly that article 123 RD/ITC does not apply to investment companies subject to the special tax regime of article 185*bis*, § 1 and 2 ITC. Since the re-draft of article 185*bis*, § 2 ITC by the Act of 30 July 2013, however, this is no longer provided. We have the strong impression that this is some kind of a "technical mistake" by the legislator.

Belgium was convicted by the ECJ in a decision of 25 October 2012 (C-387/11) because it levied withholding tax on Belgian dividends distributed to foreign investment companies, whereas Belgian qualifying investment companies were entitled to a full tax credit with respect to the withholding tax incurred. In order to end its non-compliance with articles 49 TFEU and 63 TFEU, creditability and reimbursement of withholding tax on in-bound Belgian dividends with the corporate tax liability of a qualifying investment company was abolished.

This rule does not apply if the shares in (the compartment of) the investment company are exclusively held by qualifying Belgian pension funds in the sense of article 8 of the Act of 27 October 2006.

An exemption from Belgian withholding tax on in-bound Belgian dividends is available, provided the Belgian investment company holds a participation of at least 10% for an uninterrupted period of one year (art. 106, § 6 RD/ITC).

Transactions with securities trigger TOB. A number of exceptions apply, such as an exception "*ratione personae*" for transactions performed by a qualifying investment company for its own account.

An annual tax on undertakings for collective investment (UCIs) applies. The general rate amounts to 0.0925% on "the amount outstanding in Belgium" on 31 December of the preceding year. The tax base equals the net asset value of the funds, minus the portion of the fund which is being held by non-resident investors. A reduced rate of 0.01% applies to the extent that a compartment or particular share class of the Sicav is exclusively accessible for institutional or professional investors acting for their own account. As far as "funds of funds" are concerned, an exemption applies to the extent that the tax is due at the level of the sub-fund.

b) Transparent funds

Public investment funds may also be created under the form of a so-called "fonds commun de placement". This is a type of (open-end) contractual fund which has no separate legal personality. It can be created either under the scope of Directive 2009/65/EC or as an alternative fund under the AIFM Law.

For Belgian income tax purposes, a regime of tax transparency will apply. Movable income collected by a "fonds commun de placement" incurs Belgian withholding tax upon receipt (an exception is however provided for funds for investment in receivables). Given the fiscal transparency, the withholding tax incurred upon receipt by the fund is to be considered as a tax paid on behalf of the investors.

A withholding tax exemption (e.g. on the basis of a double tax treaty) can be applied to the extent that the (foreign) investors in the "fonds commun de placement" are entitled to it.

No TOB applies to investments made by qualifying Belgian public investment funds.

The annual tax on UCIs is due by the management company of the fund. As to the rate and the tax base, we refer to our comments under section A., 1., a).

2. *Foreign widely held mutual funds/ucits*

Dividends distributed, and interest paid by a Belgian company to a foreign investment fund will generally speaking trigger 30% withholding tax.

A domestic exemption from withholding tax is provided with respect to movable income, other than Belgian dividends, which is paid out to foreign widely held investment companies located in the EEA. This exemption both applies to investment companies located in the EEA which are publicly offered in Belgium (art. 116, 2° RD/ITC) and to investment companies located in the EEA which are not publicly offered in Belgium, on the condition of similarity. Moreover, particular exemptions apply in particular situations, e.g. interest regarding debt instruments which are traded through an exempt account in the X/N regime and interest regarding registered bonds.

Generally speaking, in view of being entitled to the benefits of a double tax treaty, the beneficiary of the income first of all has to qualify as a "person" as defined in article 3 of the OECD Model. This may especially be an issue for "contractual funds" which have to be regarded as some kind of "joint ownership" rather than as a separate legal entity. Moreover, the beneficiary also has to qualify as a "resident" as defined in article 4 of the OECD Model. This may be an issue for contractual funds, but also for investment companies which are not subject to taxation in the residence state, or subject to a look-through tax regime. Double tax treaties may however provide specific clauses in view of explicitly granting the benefits of the double tax treaty to (certain types of) investment funds.

The tax status of Belgian qualifying investment companies provided by article 185*bis* ITC implies that from a Belgian viewpoint, Belgian investment companies should be entitled to invoke double tax treaties. Obviously, the viewpoint adopted by the authorities in the source state is highly relevant. When confronted with foreign investment companies collecting a Belgian movable income, the Belgian tax authorities generally agree to grant the treaty benefits provided the foreign investment companies are subject to corporate income tax, although they benefit from a special tax status. On the other hand, the Belgian tax authorities generally speaking are not prepared to grant tax treaty benefits to foreign investment companies that are not subject to tax in their residence state (*cf.* "resident" test).

The Belgian tax authorities generally speaking do not grant the benefits of the double tax treaty to contractual funds which do not have separate legal personality. However, since a contractual fund is generally speaking disregarded for the purposes of the double tax treaty, the benefits of the double tax treaty can be invoked by investors in the contractual fund for their portion in the Belgian-sourced income, provided that they are resident in a state which concluded a double tax treaty with Belgium.
Obviously, for each foreign investment fund and its investors, the wording and clauses of the relevant double tax treaty will have to be verified.
According to a number of decisions by the Tribunal of First Instance and the Court of appeal of Brussels, the application of the tax on undertakings for collective investment to a Luxembourg Sicav conflicts with article 22, 4. of the Belgian-Luxembourg double tax treaty (equivalent to art. 22, 4. OECD Model). The Tribunal of First Instance and the Court ruled that a Sicav should be entitled to invoke the double tax treaty because it is subject to the "taxe d'abonnement" in Luxembourg.
The Belgian model tax treaty provides a specific clause in view of granting treaty benefits to foreign investment funds which are not subject to taxation in their residence state. The clause has not yet been provided in a double tax treaty so far.
The Belgian tax on stock exchange transactions does not apply to foreign investment funds (non-residents are exempt).
The annual tax on UCIs also applies to foreign undertakings for collective investment provided they are being publicly offered in Belgium and are registered with the Belgian FSMA. The tax base equals the net asset value of the funds, minus the portion of the fund which is being held by non-resident investors. Only the parts in the fund for which there has been an active intervention by a Belgian distributor are taken into account. As to the tax rate, we refer to section A., 1., a).

3. *Domestically listed exchange-traded funds (domestic/foreign)*

A domestic public investment company that is listed on a stock exchange is subject to the same tax rules as a non-listed public investment company. See our analysis under section A., 1., a).

4. *Foreign listed exchange-traded funds*

For Belgian income tax purposes, a foreign public investment company that is listed on a stock exchange is generally speaking subject to the same tax rules as a non-listed foreign public investment company. We refer to our analysis under section A., 2.

B. *Privately placed investment funds*

1. *Domestic alternative institutional funds*

Only "eligible investors" are allowed to invest in Belgian institutional Sicavs. Belgian resident individuals never qualify as "eligible investors". A number of legal entities qualify automatically as "eligible investors". Legal entities which do not automatically qualify as such can still qualify, subject to registration with the FSMA.
Prior to developing any activities, a company which was incorporated as an institutional Sicav will have to request registration on the list for institutional Sicavs kept by the Ministry of Finance. This registration of the institutional Sicav on the list enables the Sicav to benefit from the relevant tax benefits.
The institutional Sicav has the duty to appoint a custodian.
As a general rule, an AIF manager admitted by the Belgian financial authority (FSMA) and holder of a permit delivered by the FSMA has to be appointed. An "intra group exemption" regarding the obligation to appoint an AIF manager is provided by article 8 of the AIFM Law. Subject to conditions, a "*de minimis*" rule (partial exemption of the obligations under AIFM) applies and allows the "alternative fund" to be managed by a "low scale" manager.
The most appropriate legal framework in Belgium for developing "hedge fund" activities while benefitting from the limited tax base provided by article 185*bis* ITC is the Belgian institutional Sicav.
The limited tax base of article 185*bis* ITC also applies to Belgian institutional Sicavs. See our analysis under section A., 1., a).
As far as the interpretation of the notion of alternative (institutional) undertakings for collective investments is concerned, the "ESMA Guidelines on key concepts of the AIFMD" (Annex III, n° 17 and following) are highly relevant. As soon as an undertaking is not prevented by its national law, by the rules or instruments of incorporation, or any other provision of binding legal effect, from raising capital from more than one investor, it should be regarded as an undertaking which raises capital from a number of investors. The fact that a particular institutional Sicav would only have one investor in practice would not have any impact on the application of article 185*bis* ITC.
Moreover, an undertaking for which there would deliberately be only one investor ("fonds dédié") would still be assimilated to an alternative (institutional) undertaking for collective investments on the basis of article 281, *sub* a) of the AIFM Law. The tax benefits provided by article 185*bis* ITC (and also by art. 106, § 7 RD/ITC, see below) explicitly refer to companies which have been incorporated and recognised as e.g. an institutional Sicav in the sense of article 285 of the AIFM Act. Consequently, an institutional Sicav with only one shareholder would also be entitled to the aforementioned tax benefits.
The limited tax base which is now provided in article 185*bis* ITC was initially provided in Belgian financial legislation.

The limited tax base is intrinsically connected with a larger set of rules (financial laws and accounting rules). It has to be possible to determine the value of the shares of an institutional Sicav on the basis of its annual accounts. Therefore, in practice, institutional Sicavs keep annual accounts according to the same principles as those laid down in the Royal Decree of 10 November 2006 (see above). This implies that unrealized capital gains on securities are being recorded in the P&L account (unlike what is the case for companies keeping accounts according to general Belgian GAAP). This obviously only makes sense given the application of the special tax base provided by article 185*bis* ITC. In this respect, it is also relevant to note that for investment funds that are not publicly issued, the status of e.g. a regulated institutional Sicav is not compulsory but optional (absence of "typendwang").
The overall exemption from withholding tax on in-bound movable income provided by article 116 RD/ITC does not apply to institutional Sicavs. Exemptions with a general scope are available, e.g. for Belgian withholding tax on in-bound foreign dividends and certain types of debt instruments.
TOB does not apply to investments made by a qualifying institutional Sicav.
The annual tax on UCIs does not apply to institutional Sicavs.

2. *Foreign alternative institutional funds*

For an overview of the Belgian tax aspects, we refer to our analysis under section A., 2. As far as investment companies which are not being publicly offered in Belgium are concerned, article 116 RD/ITC only applies to investment companies located in the EEA, provided that they are similar to one of the types of Belgian qualifying investment companies to which article 116, 1° or 2° RD/ITC is applicable (which is not the case for the Belgian institutional Sicav).
The annual tax on UCIs does not apply to foreign funds which are not being publicly offered in Belgium.

3. *Private privak*

The "Private Privak" has a fixed number of participation rights, and its sole purpose is collective investment in authorised financial instruments issued by unlisted companies. Generally speaking, a "private privak" must have no less than six unrelated investors. Each investor has to qualify as a "private investor", which implies that it has to subscribe a minimum amount of 25,000. A company which was incorporated as a "Private Privak" has to request the Ministry of Finance to be registered on the list for private privaks.
As a general rule, an AIF manager admitted by the Belgian financial authority (FSMA) has to be appointed. Subject to conditions, the "*de minimis* rule" applies (see our analysis in this respect under section B., 1.
The "private Privak" qualifies for article 185*bis* ITC, provided it is compliant with all applicable statutory rules regarding its status and that it invests exclusively in (i) "good" shares, meeting the taxation requirement of the Belgian participation exemption regime, (ii) shares of other Private Privaks[3] or (iii) temporarily or accessorily in cash and alike in accordance with the rules of article 304, § 2 of the AIFM Act. If all relevant conditions are met during a particular financial year, one will refer to it as a "category 1 Private Privak".
If the "Private Privak" invests in other allowed financial instruments issued by non-listed companies, it will be subject to the normal corporate income tax regime. Interest income will trigger taxation at the general rate. A "Private Privak" of the 2nd category will be exempt on both dividends and capital gains realised on shares, provided the shares qualify for the taxation requirement of the Belgian participation exemption. No minimum threshold or holding period applies because a private privak is a qualifying "investment company".
As far as Belgian withholding tax on in-bound movable income is concerned, the exemption provided by article 116 RD/ITC also applies to private privaks. For dividends stemming from Belgian shares, exemption from withholding tax is only available with respect to participations of a least 10%, subject to a minimum holding requirement of one year.
The annual tax on UCIs does not apply to private privaks.

4. *Foreign privately placed private equity funds*

For an overview of the Belgian income tax aspects regarding foreign privately placed private equity funds, we refer to our analysis under section A., 2. above. As far as investment companies which are not being publicly offered in Belgium are concerned, article 116 RD/ITC applies to investment companies located in the EEA, provided that they are similar to one of the types of Belgian qualifying investment companies to which article 116, 1° or 2° RD/ITC is applicable (e.g. "Private Privak").
The annual tax on UCIs does not apply to foreign funds which are not being publicly offered in Belgium.

C. *Special category: real estate funds*

1. *Domestic real estate funds*

a) Different types of Belgian real estate funds

The Belgian SICAFI (vastgoedbevak) is a closed, real estate investment company with a fixed capital. Within this category there are public and institutional SICAFIs. An institutional SICAFI needs to be either under joint control or under

3. Subject to conditions, investment companies located in a Member-State of the E.U. can be assimilated to the privat privak in this respect (Art. 192, § 3 in fine ITC).

exclusive control by a public SICAFI. Individual investors cannot invest in an institutional fund. The status of SICAFI is subject to approval and registration with the FSMA.
The FIIS ("fonds d'investissement immobilier spécialisé") is a closed, non-quoted real estate investment company with a fixed capital, only accessible for "eligible investors". The annual accounts of the FIIS are drafted under IFRS rules. Subsequent to its constitution and subject to some formal criteria, the FIIS must be registered on a list with the Belgian Ministry of Finance.
The Belgian B-REIT ("real estate investment trust")[4] is not subject to the AIFM Act because it does not qualify as an investment company which has its main focus on investments, but rather as a commercial enterprise with a "buy and hold" focus, which intends to exploit real estate in the long run. There are two types of B-REITs: the public B-REIT (which is listed) and the institutional B-REIT. The status of B-REIT is subject to approval and registration with the FSMA. An institutional B-REIT has to be held at least 25% by a public REIT (either directly or indirectly). Individuals are allowed to invest in an institutional B-REIT, provided that they invest at least 100,000 EUR. This rule deviates from the general rule that individuals are not allowed as investors in Belgian institutional investment funds. There is a special legal regime for B-REITs which invest in real estate for the social sector. The tax aspects are however the same as for "ordinary" B-REITs.

b) Tax regime

For the technical details regarding article 185*bis* ITC, we refer to our analysis under section A., 1., a). A real estate company subject to the common corporate tax regime can be converted into a qualifying real estate fund subject to article 185*bis* ITC. Such conversion triggers taxation of the latent capital gains on assets under a reduced tax rate (12.5% until 31 December 2019, 15% as of 2020).
The annual tax on UCIs applies to qualifying Belgian real estate funds (SICAFI, Belgian REIT and Belgian FIIS). As far as the tax base and the rates are concerned, we refer to our analysis under section A., 1., a).

2. *Foreign real estate funds*

Income from Belgian real estate collected by a (foreign) real estate fund which does not qualify for a Belgian regulatory regime will incur taxation according to the normal tax rules for non-resident companies. This implies that rental income and capital gains (after deduction of amortisations, expenses, tax deductions, etc.) will generally speaking incur taxation at the general tax rate of 29.58% (25% as of assessment year 2021). The foreign fund will be allowed to deduct amortisations on real estate constructions from the tax base.
As far as the application of the annual tax on undertaking for collective investment to foreign real estate funds is concerned, we refer to our analysis above under section A., 2. (only (compartments of) funds publicly issued in Belgium fall under the scope of the tax). Foreign REITs which do not qualify as an undertaking for collective investment do not fall under the scope of the tax.

II. Part Two: Taxation of investors investing in investment funds

A. Widely held investment funds

1. *Domestic public ("widely held") mutual funds/UCITS*

a) Opaque public investment companies

1) Belgian corporate investors

As a general rule, investments by Belgian corporate taxpayers in Belgian investment companies which are subject to article 185*bis* ITC do not qualify for the taxation requirement of the Belgian participation exemption. Consequently, dividends and capital gains on the Sicav shares will be taxed at the full rate.
However, dividends distributed by a Belgian Sicav qualify for the Belgian participation exemption with respect to compartments or share classes for which the bylaws of the Sicav provide an annual mandatory distribution of at least 90% of the profits, after deduction of remunerations, commissions and expenses ("Sicav RDT shares"). There is no need to include the unrealised capital gains in the annual distribution duty. The "dividend received deduction" only applies *to the extent that* the Sicav is re-distributing i) dividends which would qualify themselves as "good dividends" because they are not excluded by article 203, § 1, 1° until 4° ITC and ii) capital gains realised on shares by the Sicav which are not excluded on the basis of article 203 ITC. Furthermore, neither the minimum 10% or 2,500,000 EUR requirement nor the minimum one year holding requirement is applicable.
A Belgian corporate investor that realises a capital gain on Sicav RDT shares further to a transfer to a third party will be entitled to partially exempt the capital gain in the same proportion according to which distributions by the Sicav further to a redemption of shares qualify for DRD relief.
The corporate investor does not need to meet any minimum threshold or a minimum holding period in view of being entitled to either DRD relief or exemption of capital gains realised on Sicav RDT shares.
Dividend distributions will in general trigger 30% withholding tax. An exemption from withholding tax can however be applied, provided the Belgian corporate investor holds at least 10% in the Sicav. Subject to a number of technical conditions provided by article 281-282 ITC, the withholding tax (if applicable) is fully creditable with the investor's corporate

4. "Sociétés immobilières réglementées".

tax liability, and reimbursable in case of excess. For dividends distributed by a public privak, the same exemptions of article 106, § 9 RD/ITC apply as for the private privak (see below).

Redemption of shares by the Sicav will not trigger Belgian withholding tax (art. 21, 2° ITC).

Regarding the tax aspects of investments by Belgian investment companies which qualify themselves for the limited tax base provided by article 185*bis* ITC, we refer to our analysis under section A., 1., a) of Part 1 above. Moreover, the limited tax base provided by article 185*bis* ITC also applies to Belgian qualifying pension funds as defined in article 8 of the Act of 27 October 2006. However, the special rules regarding the non-creditability of withholding tax on Belgian dividends do not apply to qualifying pension funds. Moreover, article 123 RD/ITC is explicitly excluded with respect to qualifying pension funds.

An issue of new securities does not trigger Belgian TOB. Secondary market transactions (acquisitions and sales) of shares in a Belgian investment fund trigger 0.12% Belgian TOB, capped at 1,300 EUR per transaction. Transactions with "capitalisation shares" trigger 1.32% TOB, capped at 4,000 EUR per transaction; redemption of shares only trigger TOB in case of capitalisation shares (same rate of 1.32% capped at 4,000 EUR).

2) *Belgian individual investors*[5]

Dividend distributions by a Belgian company trigger 30% withholding tax. This also applies for dividend distributions by public investment companies[6]. For dividends distributed by a public privak, the same exemptions of withholding (art. 106, § 9 RD/ITC) apply as for the private privak (see below). Dividends for which either withholding tax or an exemption of withholding tax was applied no longer have to be reported in the personal income tax return (art. 313 ITC).

Subject to a number of conditions, capital reductions are tax exempt; an application with respect to a Belgian UCITS Sicav was made by ruling decision 800.207 of 16.09.2008: paid-up capital needs to be recorded on a separate account in the accounts of the fund, and exempt reimbursement is only possible for the NAV of the shares at the date of issue. A similar decision was made in ruling 2012.150 of 12 June 2012. Meanwhile, new tax rules apply with respect to capital reductions as of 1 January 2018: capital reductions are partially re-characterised into distributions of reserves on a pro rata basis.

Article 21, 2° ITC provides that redemption and liquidation bonuses paid out by an "investment company" do not qualify as "movable income" if the investment company is subject to a "special tax regime". The latter condition is met for Belgian qualifying investment companies which benefit from article 185*bis* ITC. Hence, as a general rule, redemption and liquidation bonuses do not trigger withholding tax. There are however two exceptions: withholding tax may still be due for "fixed funds" (art. 19, § 1, 4° ITC) or on the basis of article 19*bis* ITC.

The exemption provided by article 21, 2° ITC does not apply with respect to shares for which there was a public offering in Belgium if there was a guarantee with a maximum duration of 8 years with respect to the reimbursement or the return fixed funds.

Article 19*bis* ITC is an exception to the exemption for redemption and liquidation bonuses provided by article 21, 2° ITC. It does not apply to non-residents or to taxpayers, subject to corporate tax or the legal entities tax[7]. According to article 19*bis* ITC, the portion of the bonus originating from interest or capital gains on interest-generating assets (taxable income per share or TIS) is taxable as "interest" at 30%. It only applies to the extent that the investments in "receivables" exceed 25% of the investment fund's total assets. The threshold of 25% was lowered to 10% for shares acquired as of 1 January 2018. Since 2012, article 19*bis* ITC has also applied to the portion of the capital gain on shares in an investment fund realized further to transfers "for consideration". As of 2013, article 19*bis* ITC has also applied to investment funds which do not fall under the UCITS status. Article 19*bis* ITC does not apply to shares for which the net profits are distributed on an annual basis. As far as shares regarding (compartments of) investment funds investing only partly in debt instrument are concerned, a number of rulings have confirmed that it is sufficient that it is provided that an amount equal to the "TIS" is distributed on an annual basis in view of avoiding the application of article 19*bis* ITC.

TOB: See analysis under section A., 1., a), 1).

Since 2018, an annual tax on securities accounts (TER) has applied to individual investors, provided the average value of the securities held on securities accounts on a yearly basis amounts to at least 500,000 EUR. The applicable rate is 0.15%. By decision of 17 October 2019, the Belgian Constitutional Court has annulled the TER, however with the exception of the reference periods ending on 30 September 2019 or earlier.

3) *Taxpayers subject to the tax regime for legal entities*

The rules are the same as for Belgian resident individuals, with the exception of article 19*bis* ITC, which only applies to Belgian resident individuals. The tax on securities accounts does not apply.

4) *Foreign investors*

Under Belgian tax law, the distribution of dividends generally speaking triggers 30% WHT. No Belgian WHT is to be levied on dividends distributed to non-resident investors by

5. We do not expand on the regime with respect to investments qualifying for the tax regime for savings regarding retirement plans ("épargne *pension*").
6. We do not expand on the reduced rates for small companies.
7. The former former exemption from withholding tax on art. 19*bis*-income for payments in favor of a "*fonds commun de placement*" has been abolished by the Act of 25 December 2017.

qualifying investment companies (art. 106, § 7 RD/ITC). This exemption does *not* apply to the extent that Belgian-sourced dividends (and Belgian-sourced real estate income) are being re-distributed. However, the exemption does apply to the re-distributions of dividends collected from underlying Belgian investment companies which qualify for article 106, § 7 RD/ITC, to the extent that the underlying investment companies did not collect Belgian dividends (or Belgian real estate income)[8].

Moreover, a general exemption applies for dividend distributions by Belgian companies in favour of foreign qualifying pension funds (art. 106, § 2 RD/ITC). This exemption requires that the pension fund is exempt from income taxes in the residence state. In a situation where an EEA-based foreign pension fund does not qualify for the exemption, e.g. because it is subject to an income tax regime, one could assert that this conflicts with the free movement of capital because withholding tax on Belgian dividends collected by a Belgian pension fund is fully creditable and reimbursable.

No withholding tax is due with respect to redemption and liquidation bonuses paid out in favour of non-resident investors (art. 21, 2° ITC).

Subject to facts and circumstances, where Belgian withholding tax is applicable, a reduced tax rate (or an exemption) may apply on the basis of the applicable double tax treaty.

The Belgian tax on stock exchange transactions does not apply to foreign investors because non-residents are exempt from the tax.

b) Belgian public funds without legal personality

1) Belgian corporate investors

Investments in Belgian public funds without legal personality are taxed on a look-through basis. Further to Belgian case law and a continuous line of conduct of the Belgian ruling committee, most practitioners consider that a regime of "absolute fiscal transparency" applies. This implies i) that the investors are taxed on their portion of the income of the fund according to the characteristics of the income that was collected by the fund, and ii) that the investors incur taxation during the financial year in which the income was collected by the fund, regardless of the timing of the distributions. Given the principles of tax transparency, a corporate investor should be entitled to a tax credit with respect to the Belgian withholding tax applied "at source" by either the debtor of income, or the manager of the investment fund. Generally speaking, the corporate investor's portion in dividends and/or capital gains on shares collected by the investment fund will only qualify for DRD relief or exemption provided the minimum threshold of either 10% or 2,500,000 EUR applies in the hands of the corporate investor with respect to the underlying shares.

An issue of new securities does not trigger Belgian TOB. Acquisitions and sales of parts trigger 0.12% Belgian TOB, capped at 1,300 EUR per transaction. Redemptions do not trigger TOB.

2) Belgian corporate taxpayers subject to a special tax regime

For the income tax aspects, see analysis regarding taxpayers, subject to article 185*bis* ITC under Part One, section A., 1., a). For TOB, see analysis under section A., 1., b), 1) above.

3) Belgian individual investors

As a general rule, Belgian individual investors are taxed on their portion of the income received by a "fonds commun de placement" on a look-through basis. This requires an appropriate breakdown of the income received by the fund. Given the fiscal transparency, the withholding tax incurred upon receipt by the fund is to be considered as a tax paid on behalf of the investors.

Provided the minimum threshold of investments in receivables and debt instruments of (previously) 40% (later 25%) is exceeded, the fiscal transparency does not apply to the extent that the fund collected income from interest-generating assets. For "mixed" funds, a hybrid regime applies: taxation upon exit (redemption of parts by the funds, transfer for consideration of the fund parts) for interest and capital gains stemming from receivables and debt instruments, and taxation according to the rules of absolute fiscal transparency for other income (e.g. dividends).

The Belgian parliament introduced a new act at the end of 2017, the aim of which was to keep funds without legal personality out of the scope of article 19*bis* ITC. A number of modifications were made at the level of withholding tax exemptions. From a technical viewpoint, the aim of the legislator is not duly reflected in the new text of the law because article 19*bis* ITC itself is still referring to the overall concept of "undertakings for collective investment". In order to clearly keep the "fonds communs de placement" out of scope, it would have been useful to express this in the category of funds to which article 19*bis* ITC itself applies.

According to the text of the ITC, a breakdown of distributions (other than redemption of parts or liquidation bonuses) by a "fonds commun de placement" is needed in order to avoid a taxation at 30% as "interest income" on the basis of article 19*ter* ITC, which refers to article 321*bis* ITC. Article 321*bis* ITC states that guidelines should be issued by Royal Decree with respect to the modalities of the breakdown. Such guidelines have never been issued by Royal Decree. Moreover, a special exemption is provided by article 109 RD/ITC with respect to Belgian transparent investment funds.

For the TOB analysis, see section A., 1., b), 1).

For the annual tax on securities accounts (TER), see section A., 1., a), 2).

8. Obviously, real estate income is only relevant with respect to real estate investment companies.

4) Taxpayers subject to the tax regime for legal entities

As a general rule, Belgian entities subject to the tax regime for legal entities are taxed on their portion of the income received by a "fonds commun de placement" on a look-through basis. Article 19*bis* ITC never applies.
For the TOB analysis, see section A., 1., b), 1).

2. *Foreign widely held mutual funds/ucits*

a) Distinguishing opaque funds from transparent funds

When a Belgian taxpayer invests in a foreign fund which clearly has separate legal personality according to the *lex societatis* (i.e. the company law applicable in the jurisdiction where the company is located), this is also taken into account for Belgian income tax purposes, and the fund will consequently be treated as an opaque investment fund.
If the *lex societatis* does not provide a clear answer, the question whether a partnership has legal personality or not should be analyzed on the basis of the characteristics of the partnership as it appears from the partnership agreement. It should be verified whether the partnership has or does not have characteristics on the basis of which the partnership can be assimilated to a Belgian company (in view of being treated as an opaque fund) or not (*lex fori* test). Based on the *lex fori* test, the Belgian ruling committee has e.g. confirmed a number of times that English Limited Partnerships and Cayman Limited Partnerships qualify for tax transparency.
Funds without legal personality can also exist under the form of "contractual funds", whereby the ownership rights on the underlying assets are held in joint ownership by the investors. If the "rights in rem" on the underlying movable assets are not held in joint ownership by the investors, but e.g. by the general partner of the fund, tax transparency can still apply, provided the assets are being held as some kind of a fiduciary for the account of the fund and the fund investors.
A regime of fiscal transparency implies that the Belgian investor is taxed – *pro rata* of the portion that he is holding in the fund – as if the Belgian investor would have made the investments himself. The income from each investment made by the fund will be separately categorized, the correct level of taxation will be determined according to the rules applicable to the Belgian investor. If the fund manager wants the investors to benefit from a tax transparent treatment, a breakdown of the different categories of income received by the fund is needed. The Belgian investor will be taxed during the year that the fund has collected the income, regardless of whether the fund proceeds to any distribution of income during this year.

b) Opaque funds

1) Belgian corporate investors[9]

Belgian corporate investors investing in a foreign investment company which is exempt from corporate taxation in its residence state are not entitled to dividend received deduction or to exemption of capital gains on shares. In such a situation, the exclusion provided by article 203, § 1, 1° ITC applies, and no exceptions are available.
A Belgian corporate investor investing in a foreign investment company which is subject to the common corporate tax rules in the residence state would generally speaking qualify for the Belgian participation exemption, provided the investment company is not located in a jurisdiction where the tax rules are substantially more advantageous compared to Belgium.
A Belgian corporate investor investing in a foreign investment company which is subject to a corporate tax regime in the residence state, but not according to the common corporate tax rules would generally speaking be excluded from the Belgian participation exemption. However, the participation exemption would still be applicable, provided the shares in the foreign investment company qualify for the Sicav RDT rules (see analysis above under section A., 1., a), 1).
For TOB, see analysis under section A., 1., a), 1).
However, with respect to funds located outside the EEA, the rate of 0.35% (capped at 1,600 EUR) will apply instead of the rate of 0.12%.

2) Belgian individual investors

The tax aspects of investments in foreign widely held opaque funds (UCITS or not) are the same as for investments in domestic opaque funds (see analysis under section A., 1., a), 2).
Belgian withholding tax will generally speaking be applied if the income is paid out on a Belgian bank account. If no withholding tax was applied, the individual investor will have the duty to report the income (if taxable) in his personal income tax return.
A foreign opaque investment company can fall within the scope of the Cayman Tax if such entity is not subject to income tax in its state of residence or is subject to an income tax regime resulting in taxation below 15% on its taxable income. Shares in a foreign investment company are however excluded from the scope of the Cayman Tax if they are publicly issued and/or listed. The same goes for funds which are only available for "eligible investors" (see Part One, section B., 1. for notion of "eligible investor"). These exclusions however do not apply if the shares relate to a "fonds dédié" entity or "fonds dédié" compartment, i.e. an entity or compartment, the ownership rights of which are held by one investor or exclusively by "related investors" (family members until the fourth degree; spouses, legal partners and people

9. The CFC rules, which apply as of 1 January 2019, are generally speaking expected to have little impact on shareholdings in investment funds because they only apply if the key functions regarding the assets and the risks of the subsidiary are performed at the level of the Belgian parent. Moreover, the CFC rules only apply if the Belgian parent holds directly or indirectly over 50% in the capital, holds directly or indirectly at least 50% of the voting rights, or is entitled to at least 50% of the profits of the subsidiary.

living at the same address; investors controlling another (corporate) investor).
Moreover, for EEA-based funds, the Cayman Tax only applies provided it falls under one of the entities referred to on the EEA Royal Decree (there is no such requirement for funds located outside the EEA). The initial EEA Royal Decree of 18 December 2015, which had amended the Royal Decree of 23 August 2015, has again been replaced by the Royal Decree of 21 November 2018, which applies as of assessment year 2019. According to the new rules, (compartments of) investment companies located in the EEA generally speaking fall under the scope of the Cayman Tax in case of a "fonds dédié" shareholder structure[10].
If the Cayman Tax applies, the income received by the fund will be taxable in the hands of the Belgian resident investor, as if he had received such income directly. The income will be taxable, even if such income is not actually distributed. As a consequence, dividends, interest, and capital gains on shares received by the legal construction will continue to be categorized as such for tax purposes and will be taxable accordingly in the hands of the investor[11]. In case of distributions of this income by the investment company in a later year, the distribution will be exempt on the basis of article 21, 12° ITC. If the fund distributes the income during the same year as the year during which it was collected, some tax specialists have taken the viewpoint that there will be a conversion into "dividend" (taxed at 30%), regardless of the original characterization of the income. In our opinion, the position that there is a conversion into a dividend should not be followed because the tax regime of a distribution should not change depending on the moment in time that the distributions occurs. To the extent that the fund has "reserves" or retained earnings regarding previous years, those will be deemed to be distributed first (FIFO). This implies that the exemption provided by article 21, 12° ITC does not apply to the extent that the distributed reserves stem from the era before the Cayman Tax. Moreover, distributions under the form of redemption or liquidation bonuses may also qualify for exemption on the basis of article 21, 2° ITC, provided the relevant conditions thereto are fulfilled (See section A., 1., a), 2)).
See analysis under section A., 2., b), 1) for TOB and analysis under section A., 1., a), 2) for tax on securities accounts (TER).

3) Taxpayers subject to the tax regime for legal entities

The tax aspects of investments in foreign widely held investment funds (UCITS or not) are the same as for individuals, except that article 19*bis* ITC never applies. The rules regarding the Cayman Tax are also relevant.

See section A., 2., b), 1) for TOB.

c) Transparent foreign widely held funds

1) Belgian corporate investors

See analysis under section A., 1., b), 1). For TOB, with respect to funds located outside the EEA, the rate of 0.35% (capped at 1,600 EUR) will apply instead of the rate of 0.12%. See also section A., 1., b), 2).

2) Belgian individual investors

For income taxes see section A., 1., b), 3).
For TOB see section A., 2., c), 1). For annual tax on securities accounts see section A., 1., b), 3).

3) Taxpayers subject to the tax regime for legal entities

Income taxes: same rules as for individuals (art. 19*bis* ITC never applies).
For TOB see section A., 2., c), 1).

3. Domestically listed exchange-traded funds

Same rules as for non-listed funds apply. Article 264, 2°*bis* ITC provides an exemption from withholding tax with respect to dividends paid out further to a redemption on shares which are listed on a qualifying stock exchange. This however has little added value in the case of an investment fund, given the exemption provided by article 21, 2° ITC.

4. Foreign listed exchange-traded funds

See comments under section A., 3.

B. Privately placed investment funds

1. Domestic alternative institutional SICAV

a) Corporate investors

See analysis under section A., 1., a), 1).
Shares in Belgian institutional funds are exempt from Belgian TOB.

b) Individual investors

Not applicable.

10. For a more in-depth analysis of the application of the Cayman tax on investment funds, we refer to C. Coudron, "I.C. Art. 1, eerste lid, 1° EER-KB: kaaimantaks en in de EER gevestigde ICB's" and "II.A. Buiten de EER gevestigde ICB's: (het gebrek aan) impact van het nieuwe 'niet-EER-KB'" in C. Coudron and G.D. Goyvaerts, "De kaaimantaks als yin en yang van de Belgische fiscaliteit. Een kritische commentaar bij de invoering van het nieuwe EER-KB en het nieuwe niet-EER-KB", *TFR*, afl. 569-570, p. 855 and foll.
11. If the Cayman Tax applies, this also implies that a number of particular rules are applicable, e.g. taxation of a deemed distribution in case of a contribution of the shares in the investment fund into another entity or transfer of the assets to a jurisdiction which does not exchange information with Belgium (art. 5/1, § 2 ITC). Moreover, particular rules apply regarding the tax transparency in case of double-tier Cayman Tax entities.

c) Investors subject to the tax regime for legal entities

For income taxes, see section A., 1., a), 3). TOB see section B., 1., a).

d) Foreign investors

For income taxes, see analysis under section A., 1., a), 4). Non-resident investors are exempt from TOB.

2. *Foreign alternative institutional funds*

a) Belgian companies

We refer to the analysis regarding foreign widely held funds. An exemption from TOB applies to EEA-based funds which are only accessible for institutional or professional investors.

b) Belgian individuals

Generally speaking, we refer to the analysis regarding foreign widely held funds (and also section B., 5., b)).
For TOB, see section B., 2., a) above.

c) Belgian taxpayers subject to the "legal entities tax"

We refer to the analysis for Belgian individuals. Article 19*bis* ITC never applies to taxpayers, subject to the "legal entities tax".
For TOB see section B., 2., a) above.

3. *Foreign hedge funds domiciled in an offshore, low tax jurisdiction (outside EEA)*

a) Belgian companies

For income taxes, we refer to the analysis regarding foreign widely held funds.
Since an opaque fund in an offshore jurisdiction will often be excluded from the Belgian participation on the basis of article 203, § 1, 1° ITC, the Sicav-RDT rules will not apply. TOB only applies if there is an intervention by a financial intermediary (art. 126/1, 1° CVTD).

b) Belgian individuals

For income taxes, see sections B., 2., b) and B., 5., b).
For TOB, see section B., 3., a).

c) Belgian taxpayers subject to legal entities tax

For income taxes, see section B., 2., c).
For TOB, see section B., 3., a).

4. *Belgian private privak*

a) Belgian Corporate investors

Dividends collected from a "Private Privak" of the first category qualify for the Belgian participation exemption to the extent that the dividend distribution originates from capital gains or dividends regarding shares qualifying for the participation exemption or shares in other private privaks. Capital gains on shares in a "Private Privak" qualify for exemption. Neither the minimum threshold (of 10% or 2,500,000 EUR) nor the minimum holding period (one year) is applicable.
Dividends collected from a "Private Privak" of the second category qualify for the Belgian participation exemption for 100%. Capital gains on shares in a "Private Privak" qualify for exemption. Neither the minimum threshold (of 10% or 2,500,000 EUR) nor the minimum holding period (one year) is applicable.
Shares of a private investment fund are exempt from TOB (this also applies to other types of investors).

b) Belgian individual investors

As a general rule, going concern distributions trigger in principle 30% withholding tax. However, an exemption applies to the extent that the distribution originates from capital gains on shares. Moreover, an exemption of withholding tax applies on the redistribution of Belgian dividends if the "Private Privak" itself suffered non-creditable withholding tax upon the collection of the Belgian dividend. A reduced withholding tax rate of 15% or 20% applies if the "Private Privak" re-distributes dividends regarding shares issued by small companies qualifying for the reduced "VVPR*bis* rate". Liquidation and redemption bonuses distributed by a "Private Privak" first category, are tax exempt (see section A., 1., a), 2)), except insofar article 19*bis* ITC applies. As of 2013, article 19*bis* ITC also applies to investment funds without an "EU-passport". At the start, the viewpoint of the Belgian tax administration was that article 19*bis* ITC did not apply to investment companies investing exclusively in securities issued by non-listed companies. However, this viewpoint was abandoned by the tax administration in 2016. Before the amendments to article 19*bis* ITC in the Act of 25 December 2017, commentators argued that article 19*bis* ITC could still not apply to a private equity investment fund, because article 19*bis* ITC was still referring to "Undertakings for Collective Investment in Transferable Securities", which is the wording for investment funds with an "EU-passport" in the Directives regarding investment funds. Since the Act of 25 December 2017, this argument can no longer be upheld for shares in investment companies acquired by a Belgian resident individual investor as of 1 January 2018 because article 19*bis* now clearly refers to "Undertakings for Collective Investment". On the other hand, the tax administration has now explicitly confirmed that article 19*bis* ITC does not apply to shares in an investment fund investing in non-liquid assets (e.g. private equity) provided that the shares were acquired by the taxpayer before 1 January 2018 (Circular letter

of 25 September 2019).
Where the liquidation of the private privak (created at the earliest on 1 January 2018) implies a capital loss for the investor because the amount distributed, increased with the dividends collected from the private privak is inferior to the paid-in capital, a tax deduction of 25% is available on the basis of article 145/26/1, § 2 ITC. The deductible amount is capped at 25,000 EUR per assessment year.
The TER does not apply to shares issued by a Belgian private privak (registered shares).

c) Belgian investors subject to tax regime for legal entities

See section B., 4., b). Article 19*bis* ITC however never applies. The tax on securities accounts (TER) and the tax deduction do not apply either.

d) Foreign investors

Going concern distributions stemming from capital gains on shares, from foreign dividends collected by the privak, and Belgian dividends if the "Private Privak" itself suffered non-creditable withholding tax, are exempt from withholding taxes on the basis of article 106, § 9 RD/ITC. If the foreign investor is not a company, article 106, § 7 RD/ITC has to be invoked in order to exempt withholding tax on the redistribution on foreign dividends. A reduced withholding tax of 15% or 20% applies if the "Private Privak" invested in shares issued by small companies qualifying for the reduced "VVPR*bis* rate".
Liquidation and redemption bonuses distributed by a "Private Privak" first category, are tax exempt.

5. *Foreign privately placed private equity funds*

a) Belgian corporate investors

For corporate tax, see section A., 2., a); and see section A., 2., b), 1) for opaque funds and section A., 1., b), 1) for transparent funds. Moreover, in view of the Belgian participation exemption, opaque foreign private equity funds located in the EU can be assimilated to a Belgian private privak, subject to a number of conditions.
Shares of a private investment fund located in the EEA are exempt from TOB.

b) Belgian individual investors

We refer to our analysis under section A., 1., a), 2), to B., 4., b) only for the comments regarding article 19*bis* ITC, to section A., 2., b), 2) for opaque funds, and also to the analysis regarding the Cayman Tax). Foreign privately placed funds located outside the EEA can fall under the scope of the Cayman Tax if the entity would not be subject to income tax or to an effective taxation below 15% (regardless of whether they qualify as a "*fonds dédié*" or not).
As far as transparent funds are concerned, we refer to the analysis regarding income taxes under section A., 1., b), 3). For TOB see section B., 5., a), and for TER, see section A., 1., a), 2).

c) Belgian investors subject to tax regime for legal entities

We refer to the analysis under section B., 5., b) for Belgian individuals. However, article 19*bis* ITC and the TER never apply to legal entities.

6. *Foreign privately placed private equity funds domiciled in an offshore, low tax jurisdiction*

We refer to the analysis under section B., 5.

C. *Real estate funds*

1. *Domestic real estate funds*

a) Belgian corporate investors

Investments by Belgian corporate taxpayers in real investment companies which are subject to a deviating tax regime do not qualify for the taxation requirement of the Belgian participation exemption. Subject to conditions, the dividend received deduction will however apply to the extent that the profits distributed by the real estate fund originate from real estate located in another EU member state or a state which concluded a double tax treaty with Belgium and provided the profits have been subject to the common (resident or non-resident) corporate tax rules. Capital gains on shares further to a transfer to a third party will be partially exempt in the same proportion.
Dividend distributions will in general trigger 30% withholding tax. A reduced rate of 15% applies provided at least 60% of the real estate is directly or indirectly invested in real estate located in a member state of the EEA and which is exclusively or mainly allocated to residencies adapted for (health) care. A proportional application of the reduced rate is possible in case of mixed use.
An exemption from withholding tax can be applied, provided the Belgian corporate investor holds at least 10%.
Subject to a number of technical conditions provided by article 281-282 ITC, the withholding tax is fully creditable with the investor's corporate tax liability, and reimbursable in case of excess.
Redemption and liquidation bonuses do not trigger Belgian withholding tax (art. 21, 2° ITC).
An issue of new securities does not trigger Belgian TOB. Acquisitions and sales of shares in a Belgian investment fund however generally speaking trigger 0.12% Belgian TOB, capped at 1,300 EUR per transaction. No TOB applies if the shares are only available for professional or institutional investors (art. 126/1, 3° CVTD).

b) Belgian individual investors

Dividend distributions will in general trigger 30% withholding tax. A reduced rate of 15% applies provided at least 60% of the real estate is directly or indirectly invested in real estate located in a member state of the EEA and which is exclusively or mainly allocated to residencies adapted for (health) care.
A proportional application of the reduced rate is possible in case of mixed use. Redemption and liquidation bonuses do not trigger Belgian withholding tax (art. 21, 2° ITC), unless application of article 19*bis* ITC. Dividends no longer have to be reported in the personal income tax return if the WHT was duly applied.
For TOB see analysis under section C., 1., a).
For tax on securities accounts see analysis under section A., 1., a), 2).

c) Belgian investors subject to tax regime for legal entities

For tax aspects regarding distributions, see analysis under section C., 1., b) (art. 19*bis* ITC however never applies to legal entities).
For TOB see analysis under section C., 1., a).

d) Foreign investors

For distributions see section A., 1., a), 4).
Non-residents are exempt from Belgian TOB.

2. *Foreign real estate funds*

a) Belgian corporate investors

For opaque funds, we refer to section A., 2., b), 1), and also to the rules regarding dividend received deduction for real estate investment companies discussed under section C., 1., a) above.
For transparent funds we refer to the analysis under section A., 1., b), 1) regarding fiscal transparency. If the real estate is located in a state which has concluded a double tax treaty with Belgium, the real estate income and capital gains will, depending on the terms of the DTT, be exempt in the hands of the Belgian investor.

b) Belgian individual investors

See sections A., 1., a), 2); A., 2., a); A., 2., b), 2); B., 5., b); A., 1., a), 1) (TOB) and A., 2., b), 1) (TOB).
For transparent funds or if the Cayman Tax applies, the real estate income and capital gains will, depending on the terms of the DTT, be exempt in the hands of the Belgian investor if the real estate is located in a state which has concluded a double tax treaty with Belgium (still, the exempt income can be taken into account for computing the marginal rates in the personal income tax).

c) Belgian investors subject to the tax regime for legal entities

See section C., 2., b) (art. 19*bis* ITC and the TER never apply).

III. Part Three: Taxation of investment managers

A. *Widely held investment funds*

Generally speaking, no particular tax rules apply with respect to the taxation of salary, fees and other compensation paid out to investment managers compared to other taxpayers. Salary, fees and variable income components (e.g. bonuses) paid out to Belgian resident individuals are taxed as professional income and are subject to the globalized marginal rates in the Belgian personal income tax (25% until 12,990 EUR; 40% between 12,990 EUR and 22,290 EUR; 45% between 22,290 EUR and 39,660 EUR, and 50% for the amount exceeding 39,660 EUR). The rates are to be increased with communal surcharges[12].
Variable income components trigger taxation in the hands of the beneficiary upon the pay-out or granting. A variable income component granted under condition precedent is not taxable as long as the condition precedent is not fulfilled.
With respect to income components in kind, the tax base equals the "fair market value" of the assets which were granted. Taxation is triggered in the hands of the beneficiary upon the pay-out/granting. Here as well, if the securities are granted under condition precedent, there is no taxation as long as the condition precedent is not fulfilled. If a vesting period was foreseen, taxation only occurs upon "vesting". If the beneficiary pays a consideration for the assets, the amount of the consideration is to be deducted from the "fair market value". Consequently, the tax base is zero if the consideration equals (or exceeds) the fair market value of the assets; generally speaking, the capital gain on shares realized later in time will not be taxable either.

B. *Privately placed investment funds*

The rules discussed above under "Widely held investment funds" are also relevant for privately placed investment funds.
The special tax regime for stock options is often applied by the Belgian private equity sector. Particular rules with respect to the taxation of granting of stock options or warrants are provided by the Act of 26 March 1999. Provided the beneficiary has accepted the options within 60 days, the granting of the options is taxable as professional income on the 60th day following the offer. This is also the case if the

12. Fees and bonuses paid out to a Belgian (management company) trigger taxation at the rate of 29.58%; the general rate is reduced to 25% as of assessment year 2021, with respect to financial years starting at the earliest on January 1st 2020). Subject to conditions, a reduced rate of 20.40% applies to the first layer of profits up to 100,000 EUR collected by small companies.

options are granted under condition precedent, or subject to a cancellation clause. Provided the options are not listed, the tax base is determined on the basis of a lump sum valorization, i.e. 18% of the value of the underlying shares or profit participating certificates. If the options are granted for a period exceeding five years, an additional 1% is added for each additional year. The 18% and 1% are however reduced to 9% and 0.5% subject to the following conditions: the exercise price of the options is determined upon the granting; the option can be exercised at the earliest 3 years, and not later than 10 years after the granting; the options cannot be transferred (apart from the situation of decease); the risk of a decrease in value of the underlying shares is not being (in) directly hedged by the grantor nor by a person related to the grantor; the option relates to shares in the company for whom the professional activity is being done, or for an entity which has a direct or indirect participation in that entity.

Moreover, if the options are "in the money", the difference between the actual value of the shares and the exercise price is added to the tax base. Furthermore, if the conditions under which the options have been granted include any "certain advantage" in favour of the beneficiary, this is added to the tax base to the extent that this certain advantage exceeds the advantage for which there is a lump sum computation. If the beneficiary has to pay a consideration for the options, this amount is deducted from the tax base. The tax base is taxed as a professional income at the marginal rates in the personal income tax. The selling or exercise of the option, or the selling of the shares (further to the striking of the option), will not trigger taxation as professional income, provided the assets are not being attributed by the beneficiary to his professional activity.

If the manager has a management company, the lump sum tax regime for stock options can still be applied either directly to the investment manager, or by granting the stock options to the management company which will grant the stock options to the manager in its turn. The reduced rates of 9% and 0.5% cannot be applied in that case.

The tax regime of the Act of 26 March 1999 has been applied by the Belgian ruling committee to warrants on carried interest shares of a "Private Privak", to stock options on target companies of a private equity fund, and to stock options on shares regarding a "mirror fund", i.e. an investment vehicle which "follows" the investments made by a regulated investment fund.

C. *Closed-end funds and real estate funds*

We refer to the rules as discussed above with respect to widely held investment funds and privately placed investment funds.