

New tax basis for non-Belgian immovable property as of income year 2021

The Court of Justice formally condemned Belgium, because income from properties located abroad was taxed more heavily than comparable income from immovable properties in Belgium.

This higher tax on income from foreign immovable property is a result from the fact that, in the case of foreign immovable property, the rental income that was actually received was taken into account. For Belgian properties (both rented and non-rented), a deemed rental value (increased by 40%) was always assumed, i.e. a fixed income that is generally lower than the 'rent actually received'.

The disadvantage in relation to foreign immovable property was usually limited. A property situated in a country, with which Belgium has a double tax treaty, is as a principle exempt from tax in Belgium. This income was taken into account to determine the tax rate applicable to other taxable income (the so called progression reserve).

Belgium's proposed solution (adjustment of article 7 ICT 92)

On the 25th of February 2021 the law of February 17, 2021 was published in the Belgian official gazette. This new law should provide a solution to the problem of income from immovable property located abroad.

Belgium has decided to allocate a deemed rental income ("Belgian cadastral income") to foreign immovable properties as is the case today already for immovable property situated in Belgium. This is only to the extent that the immovable property belongs to a Belgian tax resident (with obligation to declare worldwide income).

The rules for determining the cadastral income for foreign immovable property are basically the same as for immovable property located in Belgium. For buildings, the starting point is, as a principle, the 'normal rental value' on 1st January 1975 of the building itself or of an appropriate reference parcel. If no such reference parcel is available, the cadastral income is calculated by applying the rate of 5.3% to the normal sales value of the parcel at the reference time (1 January 1975).

If there is no reference available to determine the normal sales value on 1st January 1975, the 'current normal sales value' must be used, to which a correction factor (to be determined annually) must be applied. For the year 2020 this amounts to 15.036%. It is assumed that, in general, no reference is available for immovable property located abroad.

The cadastral income of unbuilt immovable property located abroad is determined on the basis of 2 euros per hectare.

Reporting obligations

In order to establish a "cadastral income" for an immovable property located abroad, the administration must be informed about the existence of the property. Taxpayers have the

obligation to declare any "acquisition" or "alienation" of immovable property located abroad within 4 months, on their own initiative to the General Administration of Patrimony Documentation. The taxable person who already owns a foreign immovable property on 31th of December 2020, will have one year to make this declaration (until 31th of December 2021).

Sanctions

There is a administrative fine for those who do not declare foreign immovable property. The fine will be at least EUR 250 up to a maximum of EUR 3 000. This scale will be set by Royal Decree.

All these changes to the basis of assessment for personal income tax will apply from the assessment year 2022. The other provisions (including the increased administrative fine) already apply as from 1 January 2021.

Do not hesitate to contact us if you would have any questions about this new law.

Vandendijk & Partners

Advocaten, Avocats.

Brussels, 1st of March 2021.

info@vandendijk-taxlaw.be