

### **New tax basis for non-Belgian property.**

The Court of Justice formally condemned Belgium to pay the Commission compensation of 2 million euros plus a daily penalty payment of 7500 euros, because of the more heavily taxed income from properties located abroad than comparable income from 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 called the "cadastral income" (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 relative. A property situated in a country, with which Belgium has concluded a double tax treaty, is in principle exempt from tax in Belgium. This income was however taken into account to determine the rate applicable to other income of the taxpayer (the so called progression reserve).

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

In order to avoid the daily penalty payment imposed by the Court of Justice, Belgium has decided to allocate a (Belgian) cadastral income to foreign immovable property as well. This only to the extent that the immovable property does belong to a Belgian resident or entities subject to Belgian tax on legal entities.

In the absence of a reference, the "current normal sales value" is used, to which an annually determined correction factor (in year 2020: 15.063%), is then applied.

Due to the absence of a reference for foreign immovable property, only the calculation method, regarding current sales value with application of an adjustment factor, can be used. This method can also be used for properties located in Belgium.

#### **Reporting obligations**

In order to establish a cadastral income for an immovable property located abroad, the administration must be aware of the existence of a property. Taxpayers are obliged to declare any "acquisition" or "alienation" of immovable property located abroad on their own initiative to the General Administration of Patrimony Documentation. The taxable person who already has a foreign immovable property on 31st of December 2020 will have one year to make this declaration (until 31st of December 2021).

#### **Sanctions**

There is a new 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) will apply as from 1 January 2021. We will inform you as soon as the publication of this new law in the Belgian official gazette is made.

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