

## **NEW : taxation of foreign real estate in Belgium**

### **Introduction**

The European Court of Justice formally condemned Belgium in 2018, because of the fact that income from properties located abroad was taxed more heavily than comparable income from immovable properties located in Belgium.

As a consequence, a new law was published in the Belgian official gazette on the 25<sup>th</sup> of February 2021, which adapts the taxation of income from immovable property located abroad, with application as of January 1 2021.

In this new law is foreseen that a deemed rental income (“Belgian cadastral income”) will be allocated to foreign immovable properties in the future, as is already the case for Belgian immovable properties. The rules for determining the cadastral income for foreign immovable property are basically the same as for immovable properties located in Belgium.

Further in this memorandum, you will find how in general the “cadastral income” will be determined by the Belgian tax authorities, on the basis of the information that needs to be provided by the taxpayer.

### **Declaration form**

At the beginning of March 2021, the Belgian tax authorities announced that a specific declaration form can be submitted as of June 2021 to determine the cadastral income of your foreign real estate.

As of mid-June, the Administration of Measurements and Valuations started to send the relevant form to approximately 170,000 Belgian taxpayers.

Different scenarios apply based on when exactly you became the owner of a foreign property, before or after 1 January 2021.

- **Before 1 January 2021**: Two situations are possible:
  - 1) In case you have already declared the immovable income of your property in your previous Belgian individual resident tax returns, you will receive a declaration form via normal mail as of 15 June 2021. Keep in mind that the deadline to complete the declaration form has been set on 31 December 2021.
  - 2) In case you have declared the immovable income of your property for the first time in your Belgian resident tax return in 2021 (with regard to income year 2020), you will receive a declaration form in September/October 2021. The deadline for filing is also set on 31 December 2021.

- After 1 January 2021: If you purchased a foreign property after 1 January 2021 you have the obligation to request a declaration form spontaneously within 4 months following the purchase date. Please note that two situations are possible:
  - 1) You have already reported the purchase of your foreign real estate to the administration of Measurements & Valuation- Cel Foreign Cadastral Income by letter, e-mail or via MyMinfin. In such a case, the Belgian tax authorities will soon send you the declaration form.
  - 2) If you still have to declare your foreign property, you can submit your declaration via MyMinfin, via mail to [foreigncad@minfin.fed.be](mailto:foreigncad@minfin.fed.be) or via a (registered) letter to one of following addresses:
    - FOD Financien -AAPD – Cel Buitenlandse KI-Gaston Crommenlaan 6, bus 459-9050 Ledeberg
    - SPF Finances-AGPD-Cellule RC étranger- Avenue Prince De Liège, 133, boîte 459- 5100 Jambes

After receiving your declaration form, the administration will determine a cadastral income for each real estate abroad and they will notify you by registered letter. If you do not agree with the cadastral income you have two months to introduce a claim.

### **How will the Cadastral income of foreign property be determined?**

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 annual 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 2021 the correction factor amounts to 15,018%. (The tax authorities have published the list of correction factors that need to be applied between 1975 and 2021 in an administrative circular letter dated 1<sup>st</sup> of March 2021 (Circ. 2021/C/21)).

Example : A property was bought in Spain on 2/1/2021 for 300.000 euro. The cadastral income will in principle be determined as follow by the tax authorities :  $300.000 \text{ euro} / 15,018 \times 5,3\%$  = Cadastral income of 1058,72 euro which needs to be declared in the personal income tax return as of income year 2021.

The cadastral income of non-build immovable property located abroad is determined on the basis of 2 euros per hectare. The cadastral income of “material and equipment” shall be calculated by applying 5,3% to their value in use. The value in use is assumed to be equal to 30% of the acquisition or investment value as new, possibly increased by the costs of successive changes.

In order to calculate the cadastral income, the tax administration has prepared a form in which the taxpayer is asked to fill in certain data. The taxpayer in question has until the end of the year 2021 to file the form.

With regard to real estate held in undivided ownership, the tax administration emphasizes that each participant must submit the form separately, indicating their ownership rights. The same applies to real estate held by spouses, even if it is a real estate "held in community of property": each spouse must then submit a form "separately", indicating "half the share of ownership".

The value of the real estate must always be declared in euro.

There are various ways of indicating the value of the foreign property :

1. The first possibility is to state the *current sales value* of the property in question. The form confirms that this is the sale price that could be obtained under normal sales conditions at the time of the declaration. However, if you do not know this, you could also use the "historical acquisition price" or the value which was mentioned in for example a succession or gift declaration form.
2. In cases where the current normal sales value is not known, the declaration form distinguishes between the following situations:
  - The taxpayer has acquired "land" on which he has had "a building constructed". In this case, the "acquisition price of the land " must be declared, (as well as the date of the acquisition) and the price (excluding VAT) of the construction.
  - In the situation where the taxable person has acquired a build property without having carried out any transformation works, the acquisition price should be reported together with the acquisition date.
  - In the situation where the taxpayer made transformation works to an acquired property, the "current normal market value/sales value" should be reported.
3. Lastly, the form mentions the possibility of indicating "*the normal sales value or annual rental income in 1975*". The taxpayer who has information on the aforementioned values "in 1975" can ask the administration to use these values instead of the current value adjusted by the correction factor.

According to the administrative circular letter of the tax authorities, foreign taxes paid with respect to the foreign property cannot longer be deducted from the immovable income as of income year 2021.

### Conclusion

As of income year 2021 a “cadastral income” will be determined by the tax authorities for foreign property that a Belgian tax payer owns abroad, on the basis of the information received from the tax payer himself, via a specific declaration form/questionnaire, that needs to be filed before December 31 2021 for properties owned already before 1 January 2021. For properties acquired after 1 January 2021 you have 4 months following the purchase date.

Please note that it will be important to declare the correct value of the property to the tax authorities as this will be used to determine the taxable “cadastral income” that will need to be declared in the personal income tax return every year as from income year 2021.

This will not always be easy in case you own your foreign property since several years. Do you need to mention the sales price (at date of declaration) or the historical acquisition price or value already determined by foreign tax authorities for calculation of immovable taxes to be paid on the property (like in France, Spain or Italy) or value mentioned in a succession declaration form for instance? This will need to be analyzed on an individual basis, taking into account the available information with regard to the foreign property.

Foreign property situated in a country that concluded a double tax treaty with Belgium will in Belgium be exempted from taxation, as real estate is in principle taxable in the country where the property is situated. However as the tax exemption is calculated “with progression reserve” it means that the immovable income (“cadastral income”) can still have a negative influence on the applicable progressive tax rates on the rest of your taxable income in Belgium.

If you want we can calculate for your the estimated cadastral income upfront and assist you with the filing of the declaration of your foreign real estate.

Do not hesitate to contact us if you should have any questions.

With kind regards,

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