



H I R S C H & V A N H A E L S T  
A V O C A T S

## **THE FISC AND I**

***PRIVILEGES AND IMMUNITIES OF EUROPEAN CIVIL SERVANTS IN BELGIUM***

Mikaël GOSSIAUX,  
*Partner at HIRSCH & VANHAELST*  
*Lecturer for the Master in Tax Management Solvay Brussels School*  
*Professor EPHEC*

PRELIMINARY NOTE	3
INTRODUCTION	4
CHAPTER 1 - BELGIAN TAX LAW	5
CHAPTER 2 - INCOME TAXES	6
<i>Section 1. Who pays income taxes in Belgium ?</i>	6
<i>Section 2. Wich income can be taxed in Belgium?</i>	7
<i>Section 3. Special situation of the European civil servan ts</i>	11
<i>Section 4. Special situation of the spouse of the European civil servant</i>	14
<i>Section 5. Tax aspects of dependent children of the European civil servant</i>	15
CHAPTER 3 - AUTOMOBILE TAXATION	16
<i>Section 1. Tax on cars introduced into traffic</i>	16
<i>Section 2. Circulation tax</i>	16
CHAPTER 4 - REGISTRATION DUTIES	17
<i>Section 1. Sales duties on real estate</i>	17
<i>Section 2. Gift duties</i>	18
<i>Section 3. Registration duties on real estate rental contracts</i>	21
CHAPTER 5 - INHERITANCE TAX	23
<i>Section 1. Who pays inheritance tax in Belgium? Which assets can be taxed in Belgium?</i>	23
<i>Section 2. What are the inheritance tax rates due in Belgium?</i>	23
<i>Section 3. Special situation of European civil servants</i>	26
CONCLUSION	27
PRACTICAL QUESTIONS	28

## PRELIMINARY NOTE

This document only contains general information for the attention of the civil servants of the European Union.

Its purpose is to outline, in an educational way, the tax situations that European civil servants are most likely to encounter during their career in Belgium.

In no case, can the information contained in this leaflet replace a detailed professional opinion.

© 2018, SMIL SPRL (Mikael GOSSIAUX)

*All rights of reproduction or adaptation in full or in part of this booklet, by any process whatsoever and in particular by photocopy, are reserved for all countries.*

## INTRODUCTION

European civil servants and other agents often believe that their status is straightforward whereas, as it turns out, it is actually rather complicated.

Because of the rules agreed between the Member States, European civil servants and other agents must often declare all or part of their income in two separate States, namely the State of residence and the State of the source of the income.

The situation is paradoxical insofar as European civil servants and other agents generally believe that their status is vague and, in the end, do not care much about their relations with the Belgian tax administration, for those working in Brussels, and the tax authorities of their State of residence.

## CHAPTER 1

### BELGIAN TAX LAW

1. Belgian tax law includes several categories of taxes.
2. Direct taxes are levied by reason of a lasting situation by nature and may give rise to a periodically collected contribution from the same taxpayer who is directly affected by the tax:
  - Income tax ;
  - Road and car taxes ;
  - etc.
3. Indirect taxes concern a transaction temporary by nature at the time it occurs that originates from a taxpayer and which must be renewed to give rise to a new tax:
  - Registration taxes mainly apply to certain contracts concerning real estate (sales, divisions, gifts, mortgages, written leases, etc.) ;
  - Inheritance tax ;
  - VAT ;
  - Customs duties and excise taxes ;
  - etc.
4. This guide will essentially focus on practical questions that a European civil servant may have regarding the tax regime applicable to him, given the specificities of his function and the many international links that often exist.

## CHAPTER 2

### INCOME TAXES

#### *Section 1. Who pays income taxes in Belgium ?*

##### **§1. The inhabitants of the Kingdom**

5. Individuals who are tax resident in Belgium, that is to say, the "inhabitants of the Kingdom" who have established their domicile or the seat of their fortune in Belgium, are subject to the income tax on natural persons.

Tax residence is independent of nationality and legal domicile. This is usually the place where a natural person resides effectively and continuously, in other words where he lives and works. It is essentially determined by the fact of the dwelling and more particularly of the dwelling housing the family.

The seat of fortune is not the place where the property is located, but the place from which it is managed, and in principle, it coincides with the domicile.

In each case it is a question of fact.

The duration of presence is sometimes a sufficient criterion to determine whether a person is an inhabitant of the Kingdom, but the continuous and permanent nature of this presence must nevertheless be assessed.

For assessing the tax domicile, the weight of the family home in a country is more important as and when the length of stay and the professional activity in another country decreases.

Finally, until proof to the contrary, are presumed to have established their domicile or the seat of their fortune in Belgium, the persons registered with the national registry of natural persons.

##### **§2. Non-habitants of the Kingdom**

6. Natural persons who are not Belgian tax residents may also be subject to income tax in Belgium if they produce or collect income in Belgium.

In this case, however, they will be subject to the non-resident tax only on a limited range of income that has a connection with Belgium.

## Section 2. Which income can be taxed in Belgium ?

### §1. General

7. The Income tax code distinguishes four categories of taxable income:

- Real estate income ;
- Capital and movable property income ;
- Professional income ;
- Miscellaneous income.

In principle, income tax is levied on both Belgian-origin and foreign-produced income, but for the latter, the Code and the Double Taxation Avoidance Agreements provide for tax exemptions or attenuations to take into account that such income may be taxed by another authority.

Taxable income includes the net income decreased by deductible expenses.

### §2. Real estate income

#### A. General

8. Taxes due on real estate income are declared and paid in the country where the real estate is located.

In Belgium, real estate income is taxable in the name of the owner, beneficiary of a longterm lease (*emphytéote*), usufructuary, owner, superficiary, (*superflciaire*) as well as the holders of a right of use and / or housing.

9. For homeowners who live in their property, the real estate income is the "*cadastral income*".

10. The net amount of the real estate income is obtained by deducting from the rent collected or the cadastral income the interest paid on possible loans (other real estate than own dwelling).

#### B. Rented property

11. When the property is rented to a natural person for the purpose of a private dwelling, the taxable real estate income is the cadastral income multiplied by 1.4.

12. When the property is rented to a natural person who dedicates the property to his professional activity or where the property is rented to a company, the tax will be determined on the basis of the actual rent less a flat rate deemed to represent the maintenance and repair costs to be borne by the owner.

As a general rule, this flat rate is equal to 40% of the amount of the annual rent. However, this amount is capped at 40% of a "normal rent", set at two-thirds of the revalued cadastral income.

In no case, can the taxable base be lower than the Cadastral Income x the Coefficient of Article 518 C.I.R. x 140%.

### C. Real estate tax withholding

13. The property withholding tax is a regional tax that the taxpayer must pay every year on the real estate he owns. The calculation of the property tax is made on the basis of the indexed cadastral income.

Even when the property is rented, the property tax remains at the expense of the owner of the property. Any contrary provision inserted in the lease contract has no effect vis-à-vis the tax authorities.

14. A civil servant who owns real estate which he personally occupies may, like any Belgian taxpayer, request the reduction of the property tax for a dependent child or a dependent disabled person<sup>1</sup>.

15. In the Brussels-Capital Region, this reduction is equal to 10% for each nondisabled dependent child and 20% for each disabled dependent, including the spouse.

The reduction can only relate to one building, to be designated by the head of the family. The fact that several houses are occupied simultaneously does not prevent the reduction of the property tax. A taxpayer who owns a house that he occupies during the weekend and which is his family home but who, for professional reasons, is domiciled in a second house where he resides during the week, can obtain the reduction of the property tax for dependent children for the second house.

16. In the Walloon Region, the reduction is granted for any dependents of the taxpayer, his spouse or his legal or de facto cohabitant.

The reduction amounts to 125 euros per dependent. For dependent children, the household must include at least two living children linked to the household on January 1 of the relevant tax year. The reduction is doubled (250 euros) per disabled dependent or for the disabled spouse.

The spouse or legal cohabitant does not entitle to a reduction.

Similarly, to the Brussels Capital Region, the reduction can only be granted for one home.

17. In order to qualify for the reduction in the Flemish Region, the children must be entitled to family allowance and be part of the household on 1 January of the relevant tax year. Children considered to be handicapped count for two. The reductions are granted, starting from two children, according to a scale determined by the Flemish Region.

---

<sup>1</sup> Article 257 C.I.R.

This reduction is granted for the dwelling occupied by a household where at least two children are domiciled according to the registration in the population registry and who are entitled to family allowances on 1 January of the relevant tax year.

### **§3. Movable assets income**

18. These are the proceeds of movable assets, namely dividends and income from shares, interest on investments and savings accounts, income from annuities, etc.

In Belgium, this tax is paid by way of a fixed withholding tax. This tax amounts to 30% of the amount collected.

### **§4. Professional Income**

19. Professional income is the income that derives, directly or indirectly, from all kinds of activities and consists of the " profits and earnings of a previous professional activity, remuneration and pensions" collected by the taxpayer.

The taxable income is any enrichment that originates from the exercise of a professional activity.

20. The professional activity is defined as a set of operations that occur frequently and are sufficiently interrelated to constitute a regular and continuous activity.

The question of whether specific transactions constitute a professional activity is a question of fact.

### **§5. Miscellaneous income**

21. This last category of taxable income assembles income whose common characteristic is to be collected outside of the exercise of a professional activity.

With few exceptions, these revenues are taxable separately on the part of the taxpayer.

22. By way of example, miscellaneous income includes:

✓ Occasional profits and earnings

These are earnings and profits obtained outside the exercise of any professional activity.

However, they do not include profits or earnings collected as part of the normal management of private wealth and winnings at games and lotteries.

Occasional profits and earnings are taxable up to the amount received, net of actual expenses.

✓ Capital gains on shares

Capital gains on shares are not taxable provided that they are realized outside the exercise of a professional activity and as part of the normal management of the taxpayer's private assets.

✓ Annuities or alimony

Alimony received during the taxable period is taxable overall, up to 80% of the amount collected.

Alimony arrears are also taxable up to 80% of the amount collected. They may, however, benefit from a separate taxation if they are paid pursuant to a court decision providing for a retroactive effect.

✓ Collaborative Economy

Profits or earnings resulting from "services" rendered by an individual for the benefit of another individual through an electronic platform approved or organised by a public authority are considered, under certain conditions, as miscellaneous income. One of these conditions is the compliance with the ceiling of gross income (2,500 euros for the year 2016). If this limit is exceeded, they are considered as professional income.

Income originating from the collaborative economy is taxable separately at the rate of 20%, but after application of a flat rate for expenses of 50%.

The collaborative economy regime, normally in force for income paid or allocated as of July 1, 2016, will only apply as of the 2018 tax year, since electronic platform approvals have been granted as from 2017 only.

✓ Capital gains on real estate

These capital gains are taxable as miscellaneous income only if the following conditions are met:

- The building is located in Belgium ;
- It is not the own dwelling of the taxpayer ;
- there is a disposal for a consideration (i.e. mainly a sale) either within five years from the date of acquisition for a consideration, or within three years of a deed of gift and within five years of the date of acquisition for a consideration by the donor.

The taxable income is calculated on the sales price under deduction of:

- the price and the acquisition costs ;
- a revaluation of the total amount of the price and acquisition costs of 5% per full year of ownership ;
- the cost of the works that the owner has had done between the date of acquisition and the date of disposal.

## §6. Taxation scale

23. The income earned by a tax resident in Belgium is subject to the following progressive rates.

<i>Progressive rate for personal income tax for natural persons</i>	
From 0,01 to 12.470 €	25 %
From 12.470 to 21.400 €	40 %
From 21.400 to 38.080 €	45 %
For more than 38.080 €	50 %

On the basis of his personal situation, the taxpayer may benefit from an exemption, the amount of which may vary from € 4,095 to € 4,260, as well as from an additional exemption for dependent children.

### *Section 3. Special situation of the European civil servants*

#### §1. Exemption of national taxes

24. Pursuant to Article 12 of Protocol No. 7 on Privileges and Immunities, civil servants and other agents of the Communities are exempt from national taxes on salaries, wages and emoluments paid by the Communities.

To the extent that they pay a Community tax, they are exempt from national taxes on the income paid to them by the European Union, in order to avoid double taxation. This exemption also concerns the additional centimes collected by the Regions and the Municipalities.

25. European case law has specified that:

- Article 12 of the Protocol is not limited to taxes directly based on the salaries, wages or emoluments paid by the European Union, but the exemption also extends to all indirect taxation (For example, this remuneration cannot be



taken into account to tax the professional income of the spouse of the civil servant or the EU agent)<sup>2</sup> ;

- Article 12 of the Protocol precludes any national taxation, whatever its nature or methods of collection, which has the effect of directly or indirectly burdening the

<sup>2</sup> C.J.E.C., 16 December 1960, *Humblet*, 6/60, Rec. P.1125, 1158 ; C.J.E.C., 24 February 1988, *Commission/Belgium*, 260/86, Rec. p.955, pt 10 ; C.J.E.C., 22 March 1990, *Tither*, C-333/88, Rec. P.I-1133, pt. 12.

civil servants other agents of the Communities because of the fact that they are beneficiaries of a remuneration paid by the Communities, even if the tax in question is not calculated in proportion to the amount of that remuneration<sup>3</sup> ;

- The conditions giving rise to a tax advantage must be applied in a non-discriminatory way to the beneficiaries of the community civil servants likewise to all other taxpayers<sup>4</sup>.

26. As a consequence :

- Professional income paid by the Communities are exempt of national tax. The civil servants and other agents do not have an obligation to declare them to a national administration.

If necessary, they may obtain from their institution a certificate confirming their quality and the existence for them of tax exempt income.

- Disability allowances, seniority pensions, and survivors' pensions paid by the Communities to widows and widowers of civil servants and other agents are also exempt from national taxation.
- On the contrary, European civil servants remain subject to the following taxes in the country where they effectively reside:
  - o The taxes or fees imposed by the Member States which represent the counterpart of a service (regional tax, tax on rubbish, on water, etc.);
  - o Schooling taxes ;
  - o The tax for putting a motor vehicle into circulation;
  - o The annual traffic tax;
  - o Real estate taxes (in Belgium, the real estate withholding tax) ; o  
Inheritance tax.



§2. Determining the tax domicile of the civil servant<sup>5</sup>

27. If EU civil servants and other agents are exempt from national taxes on the income paid to them by the European Union, this does not mean that they are not subject to any tax or any declarative obligation in their State of residence, as explained below.

The determination of the tax domicile is essential because it is at the place where the tax domicile is located that all of the taxpayer's income (except for the income paid by the

<sup>3</sup> C.J.E.C., Commission/Belgium, *op.cit.*, pt. 10 ; C.J.E.C.,Tither, *op.cit.*, pt. 12 et C.J.E.U., 25 May 1993, Kristoffersen, C-263/91, Rec. P.I-2755, pt 14.

<sup>4</sup> C.J.E.C, 3 July 1974, *Brouerius van Nidek*, 7/74, Rec. P.757, pt. 14.

<sup>5</sup> Article 13 of Protocol n°7 on the Privileges and immunities of the European Communities (8 April 1965).

European Union) must be declared and taxed.

28. For the purposes of the application of taxes on income and wealth, Article 13 of the Protocol on the Privileges and Immunities of the European Communities provides that civil servants and other agents are considered to have retained their tax domicile in the country in which they resided at the time of their entry into service when:

- (i) The initial domicile of the civil servant was located in a Member State of the Community;
- (ii) The civil servant has established his new residence on the territory of a Member State other than the country of the tax domicile which he owned at the time of his entry into service;
- (iii) The sole cause of this change of residence is the exercise of professional activities in the service of the Communities.

As a result of this exception, civil servants living and working in Belgium are regarded as non-residents for the purposes of Belgian law.

29. The tax domicile exception only applies to European civil servants who do not pursue any other professional activity in Belgium. However, civil servants may pursue a professional activity of a truly ancillary nature (for example, teaching as a professor at a university, being a non-active partner in a Belgian company of persons), without losing the benefit of the tax domicile exception<sup>6</sup>.

30. This fiction also applies:

- To the spouse, provided that the marriage was celebrated before the entry into service of the civil servant and only to the extent that the spouse does not carry out a professional activity in the host country.<sup>7</sup>;

Cohabitation and legal cohabitation are not assimilated to marriage in terms of taxation, so that cohabitants and legal cohabitants cannot benefit from the fiction provided by Article 13<sup>8</sup>;



- Dependent children of the civil servant, provided that they were born before entering service.

31. Civil servants may not derogate from this fiction and choose the place of their fiscal domicile.

European case law has held that Article 13 of the Protocol does not give the civil servant a choice as to the determination of his tax domicile.

The intention of a civil servant which exists before entering the service of the Communities to

---

<sup>6</sup> PIRON A. *L'impôt des non-résident*, Larcier, Bruxelles, 2013, p.47.

<sup>7</sup> Com.I.R. n°227/28, [www.fisconet.be](http://www.fisconet.be).

<sup>8</sup> T.P.I.U.E., 28 janvier 1999, affaire T-264/97, D. c./ Conseil de l'Union Européenne.

transfer his place of residence in the Member State of the place of performance of his duties cannot be taken into account for the purpose of examining whether he has established his residence solely by reason of the performance of his duties, unless the civil servant provides evidence that he had taken measures to transfer his residence independently of his entry into the service of the Communities<sup>9</sup>.

32. It should be noted that, while in the majority of cases the "tax domicile" is also the place of recruitment, it does not necessarily coincide with it.

33. Finally, this fiction does not apply to retired civil servants. Thus, a retired civil servant will be taxed at the place where he establishes his principal residence and the center of his interests, whether it is a Member State or not.

### **§3. Temporary and contractual agents**

34. The provisions of Article 12 and 13 of the Staff Regulations concerning the rights and obligations of civil servants apply, by analogy, to temporary agents and contract staff.

#### *Section 4. Special situation of the spouse of the European civil servant*

35. The tax domicile exception shall also apply to the spouse of the European civil servant, provided that the latter does not carry out his/her own professional activity.

Otherwise, the employee and his/her spouse become two separate taxpayers; one could be considered under Article 13 of the Protocol as a non-resident and the other to be subject to the rules applicable to the inhabitants of the Kingdom.

If the spouse is employed or self-employed in Belgium, he/she will be taxed as a single person. He/she will be required to file a return in his own name.



#### *Section 5. Tax aspects of dependent children of the European civil servant*

36. The tax domicile exception also applies to the dependent children of the European civil servant, provided that their residence was not established in Belgium at the time the civil servant entered the service in Belgium.

37. Family allowances are exempt from tax on the basis of Article 13 of the Protocol on the Privileges et Immunities

---

<sup>9</sup> C.J.E.C., 17 June 1993, Jansen van Rosendaal C./ Staatsecretaris van Financiën, aff. C-88/92.

## CHAPTER 3

**AUTOMOBILE TAXATION**

38. European civil servants are not immune from the car tax that affects Belgian residents. Only taxes that affect private motor vehicle taxation, that is, taxes on the use of a personal motor vehicle, will be addressed here.

*Section 1. Tax on cars introduced into traffic*

39. Belgian law provides that the vehicles that Belgian residents wish to introduce into traffic in Belgium must be registered in Belgium.

40. Belgium has introduced a tax for the introduction into traffic of vehicles with license plates other than temporary, test or commercial.

The tax is due when the vehicles are presumed to be used on public roads and therefore registered in Belgium.

Relief may be granted for vehicles which, within six months of their registration in Belgium, are transferred to another Member State of the European Union for the purpose of registration.

41. The tax is due by the taxpayer mentioned on the registration certificate of the vehicle.

42. The amount of the tax is calculated on the basis of engine power, expressed in fiscal horsepower.

*Section 2. Circulation tax*

43. Belgium also provides for an annual traffic tax on steam or motor vehicles used either for the transport of persons or for the transport by road of goods or any other objects

44. A taxpayer who uses for his own use or operates one or more vehicles and who either owns / possesses such vehicle(s) or permanently or habitually disposes thereof pursuant to a rental or other agreement, must pay the traffic tax.

The vehicles of the diplomatic corps and the staff of a series of international organisations are exempted either according to the principle of reciprocity or by virtue of international conventions.

45. For cars, the taxable base is determined on the basis of the tax power of the engine.

## CHAPTER 4

**REGISTRATION DUTIES**

46. Registration duties are taxes which are due on a few specific legal acts and which are collected on the occasion of the registration formalities.

This formality consists in the copy, the analysis or the mention of an act or a writing, by the registration receiver, in a particular registry.

Are subject (in particular) to the collection of registration fees: sales / purchases of real estate, gifts of movable or immovable property as well as rental contracts for real estate.

47. The matter of registration fees has been regionalised for many years.

### *Section 1. Sales duties on real estate*

48. Belgian law provides that a sales duty is levied on transfer agreements for valuable consideration of ownership or usufruct of immovable property situated in Belgium.

The sales duty is levied on the contractual value of the transferred buildings, provided this value is not lower than the intrinsic value of the building.

49. The rate of the sales duty is 10% for buildings located in the Flemish Region (this rate will soon decrease to 7%) and 12.5% for buildings located in the Brussels-Capital Region and the Walloon Region.

However, there are preferential rates and rebates depending on the type of property acquired (modest homes, main residences, etc.).

50. Sales duties must be borne by the purchaser of the real estate.

### *Section 2. Gift duties*

#### **§1. Basic principles**

51. The duty on gifts applies to all gifts of movable and immovable property, whatever their form, purpose or modalities and the manner in which they are made. Manual gifts (including bank gifts) are an exception to this principle.

The rate can differ from Region to Region.

52. If the tax domicile of the donor has been located in more than one Region during the five-year period preceding the gift, the applicable rate is that of the Region where the tax domicile was located the longest during that period. For gifts of immovable property located in Belgium made by a non-inhabitant of the Kingdom, the applicable rate is that of the Region where the immovable property is located.



53. The fiction of the tax residence under Article 13 of the Protocol on Privileges and Immunities does not apply to registration duties. Consequently, any European civil servant who has actually established his residence in Belgium will be considered as an inhabitant of the Kingdom of Belgium for the purpose of gift taxes and will therefore be required to pay the gift tax under the same conditions as an ordinary Belgian tax resident.

54. It should be noted that if the civil servant is a Belgian tax resident, all property donated in the three years preceding his death and not subject to the gift tax in Belgium will enter the taxable base on which the inheritance tax will be calculated.

## § 1. Gift of real estate

### A. Targeted transactions

55. The gift of a building located in Belgium must in principle be recorded in a Belgian notarial deed, even if the donor and / or the donee are located outside the country.

These deeds are obligatorily subject to registration and thus subject to the tax commonly called "gift duty".

56. Gifts of real estate located abroad must not be registered in Belgium.

### B. Applicable rates

57. Gifts of real estate located in Belgium are subject to the progressive rates provided by the Region where the donor resides.

If the donor does not reside in Belgium, gifts of real estate will be taxed at the rate applicable in the Region where the gifted real estate is located.

#### ***I. Applicable rates in the Flemish Region***

58. The Flemish Region provides for different rates according to the relationship between the parties to the gift.

<i>Applicable rate in direct line, between spouses, between legal cohabitants and de facto cohabitants (subject to certain conditions)</i>	
From 0,01 to 150.000 €	3 %
From 150.000,01 to 250.000 €	9 %
From 250.000,01 to 450.000 €	18 %
Beyond 450.000 €	27 %



<i>Applicable rate between any other persons</i>	
From 0,01 to 150.000 €	10 %
From 150.000,01 to 250.000 €	20 %
From 250.000,01 to 450.000 €	30 %
Beyond 450.000 €	40 %

The calculation of the duty is made per donee and according to progressive tax rates.

59. The Flemish Region also provides for reduced gift duties for certain types of buildings,

particularly when the gift relates to the family building.

## **II. Applicable rates in the Brussels Capital Region**

60. The Brussels Capital Region provides for different rates according to the family relationship between the parties to the gift.

<i>Applicable rate indirect line, between spouses and legal cohabitants</i>	
From 0,01 to 150.000 €	3 %
From 150.000,01 to 250.000 €	9 %
From 250.000,01 to 450.000 €	18 %
Beyond 450.000 €	27 %
<i>Applicable rate between any other persons</i>	
From 0,01 to 150.000 €	10 %
From 150.000,01 to 250.000 €	20 %
From 250.000,01 to 450.000 €	30 %
Beyond 450.000 €	40 %

The calculation of the duty is made per donee and according to progressive tax rates.

61. The Brussels-Capital Region also provides for reduced gift duties rights for certain types of buildings, particularly when the gift relates to the family building.



## **III. Applicable rates in the Walloon Region**

62. The Walloon Region provides for different rates depending on the relationship between the parties to the gift.

<i>Applicable rate in direct line, between spouses and legal cohabitants</i>	
From 0,01 to 25.000 €	3 %
From 25.000,01 to 100.000 €	4 %
From 100.000,01 to 175.000 €	9 %
From 175.000 to 200.000 €	12 %
From 200.000,01 to 400.000 €	18 %
From 400.000,01 to 500.000 €	24 %
Beyond 500.000 €	30 %
<i>Applicable rate between brothers and sisters</i>	
From 0,01 to 75.000 €	10 %
From 75.000,01 to 175.000 €	20 %
From 175.000,01 to 350.000 €	30 %
Beyond 350.000 €	40 %

<i>Applicable rate between uncles or aunts and nephews or nieces</i>	
From 0,01 to 75.000 €	10 %
From 75.000,01 to 175.000 €	20 %
From 175.000,01 to 350.000 €	30 %
From 350.000,01 to 450.000 €	40 %
Beyond 450.000 €	50 %

  

<i>Applicable rate between any other persons</i>	
From 0,01 to 50.000 €	20 %
From 50.000,01 to 150.000 €	30 %
From 150.000,01 to 300.000 €	40 %
Beyond 300.000 €	50 %

The calculation of the tax is made by the donee and according to progressive tax rates.

63. The Walloon Region also provides for reduced gift duties for certain types of buildings, particularly when the gift concerns the family building.



### **§3. Gift of movable property**

#### **A. Targeted transactions**

64. Unlike real estate gifts, Belgian tax legislation does not require the registration of gifts of movable property, unless the gift is made in a Belgian notarial deed.

65. If the gift of movable property is made by a Belgian resident, the applicable gift duty rate in Belgium shall be that of the competent Region according to the tax residence of the donor.

66. If the gift of movable property is made by a non-Belgian resident, registration of the gift will not be required.

In some cases (in view of a future moving to Belgium for example), the donor may wish to register the gift. In this case, the tax administration will apply the rate provided by the Region of the tax residence of the beneficiary, and not that of the donor. If the beneficiary is also not a Belgian tax resident, then the transaction will be subject to the gift duty rate provided by in the location of the registration of the gift.

#### **B. Applicable rates**

67. The duties due on gifts of movable property amount to:

- For the Flemish Region:
  - o 3% in direct line, between spouses, between legal cohabitants and de facto cohabitants (under certain conditions);
  - o 7 % for the gifts between other persons.
- For the Brussels Capital Region:
  - o 3 % in direct line, between spouses and between legal cohabitants;
  - o 7

% pour les gifts between other persons.

- For the Walloon Region:
  - o 3,3 % in direct line, between spouses and between legal cohabitants; o 5,5 % for the gifts between other persons.

### *Section 3. Registration duties on real estate rental contracts*

68. Rental agreements are subject to the registration formality.

69. When the property is rented to a tenant for the purposes of a principal residence, the landlord is required to register the lease within two months of the signing of the lease.

This formality is free of charge.



70. Where the immovable property is not used exclusively for family or single person living, whether it is an industrial building, a piece of land or a parking lot, registration duties will be charged.

The registration duty will amount to 0.2% of the total amount of the rent and charges imposed on the tenant for the duration of the lease.

## CHAPTER 5

### INHERITANCE TAX

#### *Section 1. Who pays inheritance tax in Belgium? Which assets can be taxed in Belgium?*

71. Belgium distinguishes two types of inheritance tax in the broad sense, depending on whether the deceased was an inhabitant of the Kingdom or not:

- If the deceased is an inhabitant of the Kingdom, his heirs must bear *inheritance taxes* in the strict sense on the value of all movable and immovable property, (located in Belgium or abroad), collected in the estate of the deceased under deduction of possible debts.
- If the civil servant is a Belgian tax resident, all property gifted in the three years preceding his death and not subject to the gift tax in Belgium will be included in the tax base on which the inheritance tax will be calculated<sup>10</sup>.
- If the deceased was not an inhabitant of the Kingdom at the time of his death, his heirs will have to *bear death transfer duties* on the buildings located in Belgium, under deduction of the debts relating to this building.

#### *Section 2. What are the inheritance tax rates due in Belgium?*

72. Since 1989, the power to modify inheritance tax rates has been allocated to the Regions.

The applicable rates are those of the Region where the deceased has established his tax residence for the longest during the five years preceding his death.

#### **§1. Applicable rates in the Flemish Region**

73. The Flemish Region provides for different rates according to the relationship between the deceased and his heir or legatee but also according to the type of property bequeathed (family housing, family businesses, etc.).

The principal rates are the following:

<i>Applicable rate in direct line, between spouses, between legal cohabitants and between de facto cohabitants (under certain conditions)</i>	
From 0,01 to 50.000 €	3 %
From 50.000 to 250.000 €	9 %
Beyond 250.000 €	27 %

<sup>10</sup> C.J.E.U., 11 September 2008, *Hans Eckelkamp c. Belgisch Staat*, C-11/07.

<i>Applicable rates between brothers and sisters</i>	
From 0,01 to 75.000 €	30 %
From 75.000 to 125.000 €	55 %
Beyond 125.000 €	65 %

  

<i>Applicable rates between all other persons</i>	
From 0,01 to 75.000 €	45 %
From 75.000 to 125.000 €	55 %
Beyond 125.000 €	65 %

74. The family home of the deceased is entirely exempt from inheritance tax for the spouse or the legal cohabitant and, under certain conditions, for the de facto cohabitant.

## §2. Applicable rate in the Brussels-Capital Region

75. The Brussels-Capital Region provides for different rates depending on the relationship between the deceased and his heir or legatee but also on the type of bequeathed property (family housing, family businesses, etc.).

The principal rates are the following.

<i>Applicable rate in direct line, between spouses and between legal cohabitants</i>	
From 0,01 to 50.000 €	3 %
From 50.000 to 100.000 €	8 %
From 100.000 to 175.000 €	9 %
From 175.000 à 250.000 €	18 %
From 250.000 to 500.000 €	24 %
Beyond 500.000 €	30 %

  

<i>Applicable rate between brothers and sisters</i>	
From 0,01 to 12.500 €	20 %
From 12.500 to 25.000 €	25 %
From 25.000 to 50.000 €	30 %
From 50.000 to 100.000 €	40 %
From 100.000 to 175.000 €	55 %
From 175.000 to 250.000 €	60 %
Beyond 250.000 €	65 %



<i>Applicable rates between uncles and aunts and nephews or nieces</i>	
From 0,01 to 50.000 €	35 %
From 50.000 to 100.000 €	50 %
From 100.000 to 175.000 €	60 %
Beyond 175.000 €	70 %

<i>Applicable rates to all other persons</i>	
From 0,01 to 50.000 €	40 %
From 50.000 to 100.000 €	55 %
From 100.000 to 175.000 €	65 %
Beyond 175.000 €	80 %

76. The family home of the deceased is entirely exempt from inheritance tax for the spouse or legal cohabitant under certain conditions.

The transfer of the family home to an heir in a direct line is subject to preferential rates subject to certain conditions.

### §3. Applicable rates in the Walloon Region

77. The Walloon Region provides for different rates according to the relationship between the deceased and his heir or legatee but also according to the type of bequeathed property (family housing, family businesses, etc.).

The principal rates are the following.

<i>Applicable rate in direct line, between spouses and legal cohabitants</i>	
From 0,01 to 12.500 €	3 %
From 12.500 to 25.000 €	4 %
From 25.000 to 50.000 €	5 %
From 50.000 to 100.000 €	7 %
From 100.000 to 150.000 €	10 %
From 150.000 to 200.000 €	14 %
From 200.000 to 250.000 €	18 %
From 250.000 to 500.000 €	24 %
Beyond 500.000 €	30 %



<i>Applicable rates between brothers and sisters</i>	
From 0,01 to 12.500 €	20 %
From 12.500 to 25.000 €	25 %
From 25.000 to 75.000 €	35 %
From 75.000 to 175.000 €	50 %
Beyond 175.000 €	65 %

<i>Applicable rates between uncles and aunts and nephews or nieces</i>	
From 0,01 to 12.500 €	25 %
From 12.500 to 25.000 €	30 %
From 25.000 to 75.000 €	40 %
From 75.000 to 175.000 €	55 %
Beyond 175.000 €	70 %

<i>Applicable rates between all other persons</i>	
From 0,01 to 12.500 €	30 %
From 12.500 to 25.000 €	35 %
From 25.000 to 75.000 €	60 %
Beyond 75.000 €	80 %

78. The family home of the deceased is entirely exempt from inheritance tax on the part of the spouse or legal cohabitant under certain conditions.

The transmission of the family home to an heir in a direct line is subject to preferential rates.

### *Section 3. Special situation of European civil servants*

79. The fiction of the tax domicile provided in Article 13 of the Protocol on Privileges and Immunities is also applicable with respect to inheritance tax.

Thus, if on the basis of this rule, the domicile of a European civil servant working in Brussels is located in another Member State, the movable property of the latter located in Belgium will be exempt from inheritance tax in Belgium.

Only transfer taxes may be collected and only on real estate located in Belgium.



## CONCLUSION

Whereas European civil servants and other agents are immune from any national tax on income paid by the European Union, they are nevertheless required to comply with many tax obligations.

If for an ordinary taxpayer, the State of residence is often the State where the work is performed, for European civil servants and other agents, the situation is reversed.

Indeed they must very often take into account the tax rules of their State of residence and the tax rules of the State in which they operate.

## PRACTICAL QUESTIONS

<b>A. INCOME TAX .....</b>	<b>31</b>
<b>A.1. SPECIAL SITUATION OF THE EUROPEAN CIVIL SERVANT .....</b>	<b>31</b>
I. As a European civil servant working in Brussels am I subject to income tax in Belgium? Am I required to complete a tax return in Belgium? .....	31
II. Where will the remuneration paid to me by the European Union be taxed as long as I am an active civil servant?.....	31
III. I was recruited by the European Union during the year. Will the professional income received before my entry into service be subject to European tax?.....	32
IV. Where will the remuneration that will be paid to me by the European Union be taxed when I retire? .....	32
V. I am a European civil servant stationed in Brussels. Where will the movable income I collect be taxed? What will my situation be once I retire? .....	32
VI. I am a European civil servant stationed in Brussels. Where will the real estate income that I collect be taxed? .....	33
VII. I am a European civil servant stationed in Brussels. Where will the miscellaneous income I collect be taxed? What will happen once I retire? .....	33
VIII. I am a European civil servant stationed in Brussels. I hire house staff to maintain the home in which I live in Belgium. Can I deduct these expenses from the taxable income in the State of my tax residence? .....	34
IX. I am a European civil servant stationed in Brussels. Where will the capital gains on the shares I hold be taxed? .....	34
<b>A.2. SPECIAL SITUATION OF THE SPOUSE OF THE EUROPEAN CIVIL SERVANT.....</b>	<b>34</b>
I. I am a European civil servant stationed in Brussels. My spouse does not have a professional activity. Where will his/her income be taxed? .....	34
II. I am a European civil servant stationed in Brussels. My spouse has a professional activity. Where will his/her income be taxed? What happens if he/she stops working .....	34
III. I am a European civil servant stationed in Brussels. My spouse has a professional activity in Belgium. His/her professional income is taxable in Belgium. His/her income is taxable in Belgium. Can we benefit from the marital quota?.....	35
IV. I am a European civil servant stationed in Brussels. My spouse has a professional activity abroad. Where will his/her professional income be taxable .....	35
V. I am a European civil servant stationed in Brussels. I pay alimony to my former Belgian tax resident spouse of which I am divorced. Is this alimony taxable in Belgium? .....	36

<b>A. 3. SPECIAL SITUATION IN RELATION TO CHILDREN</b> .....	<b>36</b>
VI. I am a European civil servant stationed in Brussels and my spouse and I are Belgian tax residents. We wish to register the children as depending entirely from my spouse, even if his/her salary is higher than mine, in order to enjoy the tax benefits related to this situation. Can I do it? .....	36
VII. I am a European civil servant stationed in Brussels. My spouse and I have our children looked after. Can childcare costs be deducted in Belgium?.....	37
<b>B. AUTOMOBILE TAXATION</b> .....	<b>37</b>
I. I have bought a new car in Belgium and I am a European civil servant stationed in Belgium, must I pay the traffic tax upon introducing my vehicle into traffic at the time of its registration .....	37
II. I am a European civil servant stationed in Brussels. Must I pay the traffic tax for using my vehicle in Belgium? .....	37
<b>C. REGISTRATION DUTIES</b> .....	<b>38</b>
<b>C.1. SALES DUTIES</b> .....	<b>38</b>
I. I am a European civil servant stationed in Brussels. I wish to purchase real estate in Belgium. Will I have to pay registration duties in Belgium?.....	38
II. I am a European civil servant stationed in Brussels. I wish to sell real estate in Belgium. Will I have to pay registration duties in Belgium? .....	38
III. I am a European civil servant stationed in Brussels. I wish to purchase or sell real estate abroad. Will I have to pay registration duties in Belgium?.....	38
IV. I am a European civil servant stationed in Brussels. I wish to purchase shares of a company holding real estate in Belgium. Will I have to pay registration duties in Belgium? 38	
<b>C.2. GIFT DUTIES</b> .....	<b>38</b>
I. I am a European civil servant stationed in Brussels. I wish to donate real estate in Belgium. Will I have to pay gift duties in Belgium? .....	38
II. I am a European civil servant stationed in Brussels. I wish to donate real estate located outside Belgium. Will I have to pay gift duties in Belgium?.....	38
III. I am a European civil servant stationed in Brussels. A relative wishes to donate real estate located outside Belgium to me. Will, I have to pay gift duties in Belgium? .....	39
IV. I am a European civil servant stationed in Brussels. I wish to donate movables to person who is a Belgian tax? Will gift duties be payable in Belgium? .....	39
V. I am a European civil servant stationed in Brussels. I own property in Belgium. I wish to rent it to a natural person who uses the property as his home. Am I required to register the lease? Do I have to pay registration duties?.....	39

VI. I am a European civil servant stationed in Brussels. I am the owner of real estate located in Belgium I wish to rent it to a legal person or to a natural who uses it as his home. Will, I have to pay registration duties in Belgium? .....40

VII. I am a European civil servant stationed in Brussels. I wish to rent real estate in Belgium to live there. Must I register the lease. Will I have to pay registration duties in Belgium? ..... 40

**D. INHERITANCE DUTIES ..... 40**

I. I die at a time where I am still a European civil servant stationed in Brussels. Will the assets of my estate be subject to death duties in Belgium? ..... 40

II. I die while I am a retired European civil servant. Will the property in my estate be subject to inheritance tax in Belgium? ..... 41

III. I am a European civil servant stationed in Brussels. My spouse dies while I am still an active European civil servant and does not carry out any professional activity. Will the property that makes up his/her estate be subject to inheritance tax in Belgium? .....41

IV. I am a European civil servant stationed in Brussels. One of my dependent children dies while I am an active European civil servant. Will the property that makes up his/her estate be subject to inheritance tax in Belgium? .....41

## **A. INCOME TAX**

### **A.1. SPECIAL SITUATION OF THE EUROPEAN CIVIL SERVANT**

**I. As a European civil servant working in Brussels am I subject to income tax in Belgium? Am I required to complete a tax return in Belgium?**

**1. This will depend on the place where your tax residence is established.**

**If your tax residence is located in Belgium, all your worldwide income will be subject to personal income tax in Belgium, with the exception of the professional income paid to you by the European Union, if the latter is exonerated under Article 13 of the Protocol on the Privileges and Immunities of the Communities.**

**2. You will therefore need to complete a personal income tax return by the end of June of each year.**

**An "Article 12" certificate certifying the exemption of the professional income paid by the European Union must be attached to this return.**

**3. If your tax residence is located in another State, personal income tax will not be payable in Belgium as long as you are not a Belgian tax resident.**

**However, Belgian non-residents remain taxable in Belgium on a limited number of income which has a connection with Belgium, such as income from real estate located in Belgium, capital and movable property income when the debtor is established in Belgium, remuneration payable by a Belgian resident, etc.**

**You will need therefore to complete a tax return for non-resident natural persons sometime in the fall of each year.**

**An "Article 13" certificate must be attached to this return confirming your status as a Belgian non-resident for tax purposes under the Protocol on Privileges and Immunities.**

**II. Where will the remuneration paid to me by the European Union be taxed as long as I am an active civil servant?**

**4. Under Article 12 of the Protocol on Privileges and Immunities of the Communities, salaries, wages and emoluments paid to European civil servants are subject to a European tax.**

<i>European tax rates (per month)</i>		
<b>From</b>	<b>To</b>	<b>Rate</b>
0,01 €	117,12 €	0,00 %
117,13 €	2.067,39 €	8,00 %
2.067,40 €	2.847,56 €	10,00 %
2.847,57 €	3.263,44 €	12,50 %
3.263,45 €	3.705,67 €	15,00 %
3.705,68 €	4.121,55 €	17,50 %
4.121,56 €	4.524,72 €	20,00 %
4.524,73 €	4.940,78 €	22,50 %
4.940,79 €	5.343,95 €	25,00 %
5.343,96 €	5.759,83 €	27,50 %
5.759,84 €	6.163,00 €	30,00 %
6.163,01 €	6.579,06 €	32,50 %
6.579,07 €	6.982,23 €	35,00 %
6.982,24 €	7.398,11 €	40,00 %
<b>Beyond</b>	<b>7.398,11 €</b>	<b>45,00 %</b>

**This tax is subject to a withholding tax. This income is exempt from taxes at the national level.**

**III. I was recruited by the European Union during the year. Will the professional income received before my entry into service be subject to European tax?**

**5. No. A civil servant recruited during a calendar year will be taxed at the national level, for the part of his income related to his previous activity.**

**IV. Where will the remuneration that will be paid to me by the European Union be taxed when I retire?**

**6. Once retired, your remuneration will continue to be taxed by the European Union.**

**The end of the fiction contained in Article 13 of the Protocol on Privileges and Immunities concerns only income taxable in the State of your tax residence, but pensions paid by the European Union are not taxable at the national level.**

**V. I am a European civil servant stationed in Brussels. Where will the movable income I collect be taxed? What will my situation be once I retire?**

**7. Income from movable property must be declared and is taxable according to the rules laid down by the State where your tax residence is located, considering Article 13 of the Protocol on Privileges and Immunities.**



**8. If your tax residence is in Belgium, your movable income will be subject to the Belgian withholding tax, whatever the territorial origin of the movable income.**

**If your tax residence is outside Belgium, a Belgian tax may still be levied depending on the**

source of the income:

- If the income is paid by a Belgian debtor, you will be subject, as a non-resident, to the withholding tax. This withholding tax will be final and no other tax will be payable on the relevant income.
- If the income is of foreign origin, such income will not be taxable in Belgium and will therefore not be subject to the Belgian withholding tax.

However, if this income is paid to you by a Belgian bank, you must expressly request that it be exempted from the Belgian withholding tax and inform the bank of your status as a non-resident by providing a certificate of nonresidence.

Failing this, the bank will levy a Belgian withholding tax as it will assume that your residence is located in Belgium.

**9.** Once retired, your movable income will be taxed in the State where you will actually reside, the fiction of Article 13 of the Protocol of Privileges and Immunities ceasing to be applicable.

**VI. I am a European civil servant stationed in Brussels. Where will the real estate income that I collect be taxed?**

**10.** Real estate income is always taxed in the state where the property is located. There is no specific derogatory rule for European civil servants.

If the real estate is not located in the State of residence of the civil servant, the latter shall, however, retain the right to tax, under its internal law, the real estate owned by the civil servant, even if it is located in Belgium, unless a double taxation agreement has been entered between Belgium and the State of the tax residence, which is the case with all Member States.

**VII. I am a European civil servant stationed in Brussels. Where will the miscellaneous income I collect be taxed? What will happen once I retire?**

**11.** Miscellaneous income must be declared and is taxable according to the rules provided by the State where your tax residence is located, taking into account any possible application of Article 13 of the Protocol of Privileges and Immunities.

**12.** Once retired, your miscellaneous income will be taxed in the State where you will actually settle, the fiction of Article 13 of the Protocol of Privileges and Immunities ceasing to be applicable.



**VIII. I am a European civil servant stationed in Brussels. I hire house staff to maintain the home in which I live in Belgium. Can I deduct these expenses from the taxable income in the State of my tax residence?**

**13.** Yes.

European case law has held that the State of the tax residence of a civil servant cannot refuse the deduction of such expenses on the grounds that those costs and the related fees are incurred

in the country where the civil servant is assigned<sup>10</sup>.

This assumes, however, that the deduction is provided for by the law of the civil servant's State of residence.

**IX. I am a European civil servant stationed in Brussels. Where will the capital gains on the shares I hold be taxed?**

**14.** In Belgium, capital gains on shares (excluding significant participations) are not taxable, insofar as they are realized by the taxpayer as part of the normal management of his private assets.

However, if your tax residence is established in another Member State, pursuant to Article 13 of the Protocol of Privileges and Immunities, the realized capital gain may be taxable according to the tax legislation of that State.

**A.2. SPECIAL SITUATION OF THE SPOUSE OF THE EUROPEAN CIVIL SERVANT**

**I. I am a European civil servant stationed in Brussels. My spouse does not have a professional activity. Where will his/her income be taxed?**

**15.** The tax residence of your spouse is located in the Member State where you have your own tax residence.

The income of your spouse (by hypothesis, other than professional) will therefore have to be declared and will be taxed according to the rules of your State of residence. However, income from Belgian sources, may be subject to the non-resident tax in Belgium.

**II. I am a European civil servant stationed in Brussels. My spouse has a professional activity. Where will his/her income be taxed?**

**16.** If your spouse has a professional activity in Belgium and resides there, he/she will have his/her tax residence in Belgium.

His/her professional income will therefore be taxable according to the rules provided for by Belgian law.



**III. I am a European civil servant stationed in Brussels. My spouse has a professional activity in Belgium. His/her professional income is taxable in Belgium. His/her income is taxable in Belgium. Can we benefit from the marital quota?**

**17.** The mechanism of the Belgian "marital quota" provides that a share of the professional income of one spouse is taxed in respect of the other spouse if the latter's own income is less than 30% of the couple's income.

Since the European civil servant does not declare any professional income, could part of his spouse's income be allocated to him/her?

---

<sup>10</sup> C.J.E.U., 13 November 2003, Case Theodor Schilling c. Finanzamt Nürnberg-Süd (aff. C-209/01).

Belgium refuses to apply this marital quota to the spouses of Community officials, since the spouses are considered as single persons from a tax point of view, which will be the case when the European civil servant receives an annual salary higher than 10.230 €.

European case law has found that this refusal is not contrary to Article 13 of the Protocol on Privileges and Immunities<sup>11</sup>.

**IV. I am a European civil servant stationed in Brussels. My spouse has a professional activity abroad. Where will his/her professional income be taxable.**

**18.** This depends on the type of activities of your spouse and where you were recruited.

The situation will have to be reviewed in a special way, but the situation can be summarized, very schematically, in the following table.

	<b>Recruitment of the civil servant in Belgium</b>	<b>Recruitment of the civil servant in another Member State</b>
<b>Salaried Activity</b>	Your spouse will be deemed to have established his/her tax residence in Belgium and will be taxed on all his/her income, subject to the application of a possible double taxation agreement.	If the tax residence of your spouse stays in the other Member State <sup>12</sup> , the income will remain taxable according to the rules prevailing in such Member State subject to the application of a possible double taxation agreement.



<sup>11</sup> C.J.E.C., 14 October 1999, Vander Zwalmen et Massart, Case C-229/98.

<sup>12</sup> Warning: it is important that your spouse does not register in the Belgian population register, in order to avoid the tax presumption according to which a person registered in the register of the Belgian population establishes his/her residence in the country.

	<b>Recruitment of the civil servant in Belgium</b>	<b>Recruitment of the civil servant in another Member State</b>
<b>Self-employed activity</b>	Your spouse will be deemed to have established his/her tax residence in Belgium and will be taxed on all his/her income, subject to the application of a double taxation agreement.	in some cases, even if the tax residence stays in the other Member State <sup>13</sup> , the Belgian tax administration may consider that the spouse has a permanent establishment in Belgium and tax him/her on the taxable income generated in Belgium.  Taxable income generated elsewhere will remain taxable in the country of the tax residence, subject to the application of a possible double taxation agreements.

**V. I am a European civil servant stationed in Brussels. I pay alimony to my former Belgian tax resident spouse of which I am divorced. Is this alimony taxable in Belgium?**

**19.** Yes. The alimony paid by a European civil servant to a Belgian tax resident is taxable in Belgium since the beneficiary is taxed in Belgium on all the worldwide income he/she receives.

This annuity will be taxed up to 80% provided that it is paid in fulfilment of an obligation resulting from civil or judicial legislation (such as post-divorce support), that the beneficiary is not part of the debtor's household, that the annuity is paid regularly and that it is justified by conclusive evidence<sup>14</sup>.

**A.3. SPECIAL SITUATION IN RELATION TO CHILDREN**

**VI. I am a European civil servant stationed in Brussels and my spouse and I are Belgian tax residents. We wish to register the children as depending entirely from my spouse, even if his/her salary is lower than mine, in order to enjoy the tax benefits related to this situation. Can I do it?**

**20.** European civil servants and their spouses may choose the parent from whom the children depend<sup>15</sup>, regardless of the amount of income received by each taxpayer.



**VII. I am a European civil servant stationed in Brussels. My spouse and I have our**

<sup>13</sup> *Idem.*

<sup>14</sup> Com.I.R., n°90/18.

<sup>15</sup> Instruction du Ministre des Finances du 20 novembre 2002.

children looked after. Can childcare costs be deducted in Belgium?

21. Yes, provided that your spouse earns taxable professional income in Belgium and that the conditions laid down in Belgian internal tax law are complied with, and in particular that the expenses are incurred<sup>16</sup> :

- Either to recognized, subsidized or controlled institutions or hosting centers :
  - by the Birth and Childhood Office, by "Kind en Gezin" or by the Government of the German-speaking Community ;
  - or by local, community or other public authorities, other than those referred to in the first indent, or regional ;
  - or by foreign public institutions established in another Member State of the European Economic Area ;
- or to independent foster families or crèches, placed under the supervision of the institutions referred to *above* ;
- either to schools established in the European Economic Area or to institutions or hosting centers which have a link with the school or its organizing power.

## **B. AUTOMOBILE TAXATION**

I. I have bought a new car in Belgium and I am a European civil servant stationed in Belgium, must I pay the traffic tax upon introducing my vehicle into traffic at the time of its registration.

22. Yes. Cars that a person residing in Belgium wishes to introduce it into traffic in the country must be registered in Belgium.

European case law has considered that this provision is not contrary to European law<sup>17</sup>.

II. I am a European civil servant stationed in Brussels. Must I pay the traffic tax for using my vehicle in Belgium?

23. Yes. There is no exception for the traffic tax for European civil servants.

---

<sup>16</sup> Article 113, §1<sup>er</sup> C.I.R. 92.

<sup>17</sup> C.J.E.C., 21 March 2002, Cura Anlagen GmbH et Auto Service Leasing GmbH (ASL), C-451/99 ; C.J.E.C., 15 juillet 2004, *Marie Lindfors*, C-365/02 ; C.J.E.C., 17 June 2003, De Danske Bilimportører and Skatteministeriet, Told-og Skattestyrelsen, C-383/01.

## C REGISTRATION DUTIES

.

### C.1. SALES DUTIES

**I. I am a European civil servant stationed in Brussels. I wish to purchase real estate in Belgium. Will I have to pay registration duties in Belgium?**

**24. Yes. A buyer of real estate is required to pay the sales duty on property acquired in the Region where the property is located.**

**The duty will be due without regard to the tax residence of the parties to the transaction.**

**II. I am a European civil servant stationed in Brussels. I wish to sell real estate in Belgium. Will I have to pay registration duties in Belgium?**

**25. Legally, yes. However, it is customary to provide that the registration duty is borne by the person who acquires the real estate. This contractual clause is however not opposable to the tax authorities, which could therefore turn to the seller if the buyer has failed to pay the sales duty.**

**III. I am a European civil servant stationed in Brussels. I wish to purchase or sell real estate abroad. Will I have to pay registration duties in Belgium?**

**26. No. Belgium claims registration duties for transfers for value only for real estate located in the Kingdom.**

**IV. I am a European civil servant stationed in Brussels. I wish to purchase shares of a company holding real estate in Belgium. Will I have to pay registration duties in Belgium?**

**27. No. The acquisition and the sale of shares of a company, even if it predominantly owns real estate, is not subject to the sales duty in Belgium.**

### C.2. GIFT DUTIES

**I. I am a European civil servant stationed in Brussels. I wish to donate real estate in Belgium. Will I have to pay gift duties in Belgium?**

**28. If you are a Belgian tax resident, gift duties will have to be paid at the rate applicable in the Region where you live.**

**If you live outside Belgium, gift duties will be due, but the applicable rate will be the rate applicable in the Region where the real estate is located.**

**II. I am a European civil servant stationed in Brussels. I wish to donate real estate located outside Belgium. Will I have to pay gift duties in Belgium?**

**29. No Belgium only taxes real estate gifts of real estate located Belgium.**

**III. I am a European civil servant stationed in Brussels. A relative wishes to donate real estate located outside Belgium to me. Will, I have to pay gift duties in Belgium?**

30. No Belgium only taxes gifts of real estate located in Belgium.

**IV. I am a European civil servant stationed in Brussels. I wish to donate movables to person who is a Belgian tax? Will gift duties be payable in Belgium?**

31. The answer depends on whether or not you are a Belgian tax resident and according to the form of the donation.

	<b>Notarized Belgian gift</b>	<b>Non-notarized gift or gift notarized by a foreign notary</b>
<b>Belgian tax resident donor</b>	The gift will in any case be subject to the gift duty according to the rates prevailing in the Region where you reside.	The gift will be subject to the gift duty at the rate prevailing in the Region where you reside if you spontaneously present the donation to the registration formality.
<b>Donor who is not a Belgian tax resident</b>	The gift will in any case be subject to the gift duty according to the rates prevailing in the Region where you reside .	The gift will be subject to the gift duty according to the rates prevailing in the Region where the beneficiary resides or, in the absence of his residence in Belgium, in the Region where you decide to spontaneously submit the gift to the formality of the registration of the gift.

**V. I am a European civil servant stationed in Brussels. I own property in Belgium. I wish to rent it to a natural person who uses the property as his home. Am I required to register the lease? Do I have to pay registration duties?**

32. The lease contract must be registered, even if the property is leased to a natural person. The registration must be made by the lessor, that is to say you.

Registration of a lease for a home is free of charge. No registration duty will be due.

**VI. I am a European civil servant stationed in Brussels. I am the owner of real estate located in Belgium I wish to rent it to a legal person or to a natural who uses it as his home. Will, I have to pay registration duties in Belgium?**

**33. The lease contract must be registered. In this case, the registration fee will be 0.2% of the total amount of rent and charges for the total duration of the contract. Registration fees may be charged to the tenant.**

**34. Thus, for example, an office space rented € 1.000 + € 200 charges per month for a period of 9 years will result in the collection of a registration duty of  $1.200 \times 12 \times 9 \times 0,002 = € 259,20$ .**

**VII. I am a European civil servant stationed in Brussels. I wish to rent real estate in Belgium to live there. Must I register the lease. Will I have to pay registration duties in Belgium?**

**35. It is the lessor who must register the lease. This registration is free of charge.**

#### **D. INHERITANCE DUTIES**

**I. I die at a time where I am still a European civil servant stationed in Brussels. Will the assets of my estate be subject to death duties in Belgium?**

**36. This will depend on where your tax residence is located, considering any possible application of the fiction provided for in Article 13 of the Protocol on Privileges and Immunities.**

**37. *If your tax residence is located in Belgium, all of your possessions will be subject to inheritance duties in Belgium.***

**Property which is located abroad may be eligible for exemption in Belgium on the basis of a double taxation agreement on inheritance.**

**Today Belgium has only entered such an agreement with France and Sweden.**

**38. *If your tax residence is located outside Belgium, only the real estate located in Belgium will be subject to the Belgian inheritance tax. It will, however, be possible to deduct from the value of the assets taxable in Belgium the debts relating to these assets.***

**Real estate may, however, also be taxed abroad under the domestic law of the State of the tax residence.**

**It will also be necessary to verify in this case whether a double taxation agreement on inheritance has been concluded between the two countries and whether the property may benefit from an exemption in one or the other country.**

**Today Belgium has only entered such a convention with France and Sweden.**



**II. I die while I am a retired European civil servant. Will the property in my estate be subject to inheritance tax in Belgium?**

**39.** Since retired officials cannot invoke Article 13, your estate will be settled according to the civil and tax rules of the place where your residence will be established on the day of your death.

**III. I am a European civil servant stationed in Brussels. My spouse dies while I am still an active European civil servant and does not carry out any professional activity. Will the property that makes up his/her estate be subject to inheritance tax in Belgium?**

**40.** If your spouse does not work at the time of death, Article 13 of the Protocol on Privileges and Allowances will apply.

The estate assets will therefore be subject to inheritance tax according to the same rules as those set out in question I for serving European civil servants.

**IV. I am a European civil servant stationed in Brussels. One of my dependent children dies while I am an active European civil servant. Will the property that makes up his/her estate be subject to inheritance tax in Belgium?**

**41.** If your child is still your dependent on the day of death, Article 13 of the Protocol on Privileges and Immunities will apply.

The estate assets will therefore be subject to inheritance tax according to the same rules as those set out in question I for serving European civil servants.



[www.hvlaw.eu](http://www.hvlaw.eu)