



## Bad loser

Until recently officials of international institutions were able to benefit from an inconsistency in the Belgian income tax code. Unfortunately for them the taxman has caught on.

Officials working for international institutions are not liable to tax in Belgium. That is an unwritten principle of international law. However, unwritten principles are not worth the paper they are written on. And that is why all international institutions that set up in Belgium sign a treaty with the Belgian State. That treaty lists the privileges of the institutions and those of its civil servants. And one of their privileges is that they do not pay tax in Belgium.

Not all treaties are the same. The Protocol on the Privileges and Immunities of the European Communities is one of a kind. EC officials do not pay income tax on their remuneration wherever they live in Europe. What's more, if they are living over here, Belgium has to treat them as if they are still living in the Member State they came from when they joined. Whether income tax or wealth tax is due on their investments needs to be verified in the country where they lived before they were recruited. And that is not necessarily their country of nationality. And if they die while in service, that is where inheritance tax will be due. Belgium can tax income that comes from Belgium. That can be rent from Belgian property or interest from investments in Belgium. If Belgium levies tax, the official may then get a tax reduction under the double tax treaty between Belgium and the other country.

For officials of other institutions the exemptions are not as wide. Belgium will refrain from taxing the remuneration paid by the institution. But the official will still be living in Belgium. And if he has any income other than his remuneration, he will have to file a tax return to declare it. And pay tax on it. Now, if anyone else had income on top of his remuneration that would be taxed together with the remuneration. And then the tax would normally be 50 percent.

If not, the tax will be much less. And an official would receive the first € 6,000 tax free. That doesn't feel right and that is why Belgium includes an "exemption with progression" provision in most treaties. That means the taxman first calculates the theoretical tax rate on all his income, including the exempt income. And that tax rate will be used to calculate the tax due on the income other than the exempt remuneration.

A decade ago, some Eurocontrol officials fought back. Because of this provision, their spouses had to pay more tax on their Belgian remuneration. They claimed that, even if Belgium had reserved the right to tax the other income at the higher rates, there was no legal basis for doing so in the tax code. And the Supreme Court followed them. The 'exemption with progression' provision in the tax code only applies to income that is exempted under a double tax treaty. A treaty with an international institution does not count. Even if it has a tax provision, the Eurocontrol treaty is certainly not a double tax treaty.

Some taxmen just could not let go. They continued to give instructions to local tax inspectors to disregard this case law for officials of other international institutions. These inspectors were actually quite embarrassed by the situation, but they followed their instructions. And they obliged officials to declare their remuneration. Fortunately, that did not make much difference anymore because a spouse of an official has to file a separate tax return anyway. And since 2004 husband and wife are taxed separately anyway. However, the law is the law and even in 2006 the courts confirmed the Eurocontrol case law.



In the meantime, the taxman changed the goalposts. A change of the law was rushed through parliament in December last year. And since 1 January 2005, officials need to declare their tax exempt remuneration.

Talk about bad losers.

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