

## Belgium's new tax regime for overseas real property

The European Court of Justice has condemned Belgium's tax regime for overseas property. The federal parliament has finally adapted the rules, but not as was anticipated. Marc Quaghebeur and Melody Nele examine the new tax regime and the new obligations for Belgian residents who own a house or an apartment abroad.

**B**elgium taxes houses and apartments abroad more heavily than houses and apartments in Belgium. The European Court of Justice had already found this in 2014 and 2018 and in a decision of 12 November 2020, the European Court of Justice has condemned Belgium to pay a fine of €2 million with a penalty payment of €7,500 for every day the rules are not changed (case [C-842/19](#)).

### Different tax rules

This “heavier tax burden” relates to the fact that the tax base for overseas property held by Belgian taxpayers is much higher than the tax base for Belgian property.

In the case of real property in Belgium, whether that is a second residence or a buy-to-let, the tax is calculated on the cadastral revenue (unless the tenant is a professional or a company).

### Cadastral revenue

Each property in Belgium is registered with the land register (‘cadastre’), where it gets a value for tax purposes, the ‘cadastral revenue’.

Marc Quaghebeur is a partner and Melody Nele is an associate with Cabinet DAVID, both are specialising in international taxation and cross border tax and estate planning.

Historically, the cadastral revenue is the theoretical rental value for the property, but (generally speaking) it is the theoretical annual rent the property could have been let for on the open market on 1 January 1975.

The idea was that this would be reviewed every ten years property by property.

In the nineties, the legislator decided that it was much easier to link the cadastral revenue to the consumer price index.

When a new property is occupied, or when an existing is renovated or updated, this must be reported to the tax authorities and a new cadastral revenue will be given by the tax authorities.

Properties outside Belgium do not have a cadastral revenue, and Belgium had a different tax regime.

For a property abroad, the owner must declare the gross rent received or, in the case of a second residence, the rental value. This rental value is the rental income he would normally receive if it were let out. He cannot deduct any expenses for maintenance or repairs, but the tax authorities calculate the tax on 60% of the rent or rental value. Yet, any income tax paid in the other country can be deducted.

### Exemption with progression

That does not mean that he pays income tax in Belgium as real property income is generally exempted under the relevant double tax treaty. Belgium has signed a double tax treaty with all [EEA](#) Member States so that there should not be a problem.

The problem is that the higher tax is an indirect higher tax.

When there is double taxation of income, governments sign “conventions for the avoidance of double taxation”. In these double tax treaties, they agree which of them can tax the income. More importantly, the treaty also says what they must do to prevent double taxation, that is “treaty relief”.

For rental income abroad, all treaties say that the income is taxable in the other country and that Belgium must

give treaty relief. Belgium gives treaty relief by way of “exemption with progression”. This means that Belgium looks at all the taxpayer’s income including the rental income or rental value and calculates the average tax rate, e.g. 42%, and then takes out the 42% tax relating to the overseas rental income.

The overseas income is exempt, but it pushes other income that is liable to tax in Belgium higher up in the progressive tax brackets. Without that rental income, the average tax rate might have been only 35%. If Belgium taxed a cadastral revenue, the average tax rate might only be 39% and not 42%. That difference of 3% tax on Belgian income is the problem.

### EU law

In 2014, the Court of Justice of the European Union already found that the obligation to declare the rental value for an overseas property was an infringement of the free movement of capital guaranteed by European law (case C-489/13, [Verest and Gerards](#)). Belgium had admitted as much to the Commission in 2012.

In a [practice note](#) of 29 June 2016 in respect of second residences, the Belgian tax administration accepted that the ‘rental value’ to be taken into account may in principle always be replaced by ‘the fictitious income’, established or explicitly approved by a foreign authority, of the property abroad. By way of example they referred to the *valeur locale cadastrale* for French properties.

In practice, the tax authorities accepted that one declares the *valeur locale cadastrale* for a flat in Paris, 2% of the *valor cadastrale* for a house on the Costa del Sol, the *rendita cadastralaçe* plus 5% for an apartment in Venice, etc. Furthermore, there is case law that accepted 22.5 % of the rental income as a valid alternative for the cadastral revenue.

Four years later, the Court of Justice also found that the income from real property abroad let to a private individual who uses it for non-professional purposes (or to certain legal persons with a view to making it available to one or more private individuals) was taxed more heavily than income from comparable real

property in Belgium. Belgium was again scolded for infringement of the free movement of capital (case C-110/17 [Commission v. Belgium](#)).

Belgium had to change this rule but the political will to do so was lacking.

After the second decision in 2018, the European Commission urged Belgium to comply with the case law of the Court of Justice. In the absence of a sufficient response from the Belgian authorities, the Commission finally asked the Court of Justice on 19 November 2019 to formally condemn our country for not implementing European case law.

In its defence, the Belgian State had pointed out, among other things, that the criticism of the Court's (first) decision had already been addressed with a [practice note](#) of 29 June 2016. That did not satisfy the Court; the practice note is not sufficient since it only covers non-rented real property abroad. Furthermore, the Belgian State seems to have shot itself in the foot as it had admitted in its answer to the Commission that the problem must be tackled by a change of the law and that has not happened.

On 12 November 2020, the European Court of Justice has condemned Belgium to pay a fine of €2 million with a penalty payment of €7,500 for every day the rules are not changed (case [C-842/19](#)).

## The new rules

Rather than exempting all overseas real property or taxing all Belgian real property, the Finance Minister chose the hard route: give a cadastral revenue to all real property abroad.

### Cadastral Revenue

But how do you determine a cadastral revenue for overseas properties?

Simple, in the same way as we determine the cadastral revenue for a Belgian property, by starting from the "normal net rental value" on 1 January 1975 of the property itself or of an "appropriate reference plot"; and

if no such reference plot is available, we take 5.3% of the normal sales value of the property on 1 January 1975.

If there is no reference to determine the normal sales value on 1 January 1975, we will take the market value today with a correction factor that is determined every year. For 2021, this correction factor is 15.018.

The cadastral revenue will be 5.3% of the normal sales value divided by 15.018. The cadastral revenue is, therefore, €353 per €100,000 of the value of the property.

If one cannot determine the market, one can calculate back the value in 1975 from the purchase price with the coefficient for the year of purchase. The coefficients for 1975-2021 can be found [here](#) (at 2.2.1).

As for unbuilt land, the same rule will apply but - just like for Belgian land - the minimum value is €2 per hectare or €0.4 per acre.

## What do I have to do?

If you have a house or an apartment abroad, this is what you have to do.

### You own overseas property

If you have a house or a flat abroad, you have (or you should have declared) the rent you received in your tax return. If it is a second residence that is not let out, you declared the rental value. The tax authorities are aware that you own property and they will invite you to report on that property.

They will ask you to give a description of the property, the address and the normal sales value. This is the market value that can be obtained under normal market conditions. The tax administration will recalculate the value back to 1975 with a coefficient of 15.018. A house worth €450,000 now would have been  $€450,000 / 15.018 = €29,964$  in 1975; the cadastral revenue is 5.3% or €1,588.

If you do not know the market value, you can report the price you paid for it and the year of acquisition (or the year you inherited it and the value you reported for inheritance tax purposes).

For a property bought for €200.000 in 2009, the cadastral revenue is calculated as 5.3% of 200,000 / 12.212 = €434. The coefficient for 1975-2021 can be found in the [practice note](#) (at 2.2.1).

If you have renovated or refurbished the property since then, you must report the cost and the year, allowing the tax authorities to revalue the property.

The information can be reported to the tax administration via [MyMinfin](#) (as of June 2021) or with a paper form that can be requested

by e-mail to [foreigncad@minfin.fed.be](mailto:foreigncad@minfin.fed.be)

or by mail to Administration Mesures & Evaluations  
Cellule RC étranger  
Boulevard du Roi Albert II 33, bte 459  
1030 Brussels

or Administratie Opmetingen en  
Waarderingen  
Cel buitenlands KI  
Koning Albert II laan 33, bus 459  
1030 Brussels.

Of course, the tax authorities can question this value and request additional information (e.g. a description of the property, a copy of the acquisition deed, etc.).

## You forgot to report your rental income

Some taxpayers are still unaware that they have to report the rent they received or the rental value of their property.

The Belgian tax authorities are not aware that they have property and it is up to them to report their overseas real property to the tax office before the end of the year.

They have to give them a description, the address and the market value of their house or flat, and if they cannot, the year and the purchase price.

For the rest we refer to what we said above under “You own overseas property”.

Taxpayers who forgot to declare the rental income or the rental value in their past income tax returns should declare it in their 2021 income tax return for their 2020 income. They should declare the actual rental income or the rental value according to the current rules.

We would recommend that they regularise the situation for 2018 and 2019 in a letter to their local tax office. The tax authorities can only go back three years. And as mentioned above, this rental income will not be effectively taxed, but it may raise the tax on your other income a bit (see below).

## You are about to buy property abroad

In that case, you must send the same information (i.e. a brief description of the real property, its location, the surface area and its normal sales value as indicated in the purchase agreement) within four months of the acquisition of the real property located abroad.

## You renovate property

If you have renovated or refurbished your property, you must report that to the tax office above within thirty days after the newly built or rebuilt property is occupied or let out, after the renovation or refurbishment has been completed.

This may result in a change of the cadastral revenue.

## You become a resident

If you become a Belgian resident during the year, you will have to report the information regarding your overseas real property within 30 days after you take up residence.

The tax authorities will require the same information: a brief description of the real property, its location, the surface area and the normal sales value. The declaration must be addressed to the tax office above.

## Appeal

If you do not agree with the cadastral value determined by the Belgian tax authorities, you can appeal the cadastral revenue by registered mail within 2 months after you receive the notification of the cadastral revenue.

In your appeal you must explain what cadastral revenue you propose as an alternative for the cadastral revenue the tax office proposes.

The appeal must be submitted to the same tax office mentioned above.

## Penalties

Failure to report the sales value will result in penalties between €250 and €3,000, on a scale to be determined in a Royal Decree.

This fine is new for overseas property, but it will be extended to everyone who forgets to report improvements or existing real property.

## When?

The changes will take effect for the tax year 2022, i.e. from 1 January 2021. In your online tax return for 2021, you will find a "wizard" to help you declare this new cadastral revenue for overseas properties. In practice, the cadastral revenue should be available by 1 March 2022 on [Myminfin](#).

Nevertheless, individuals who owned an overseas property in 2020 must report the cadastral revenue at the latest on 31 December 2021 or respond to the invitation of the tax administration by then.

If you bought an overseas property between 1 January 2021 and 24 February 2021, you have until 30 June 2021 to report this to the tax office.

When you buy or sell an overseas property, you will have four months to report this to the tax office.

And when you renovate or refurbish, thereby increasing the value of the property, you have thirty days to report that.

## Tax regime

The cadastral revenue will be used to determine the taxable base of all properties abroad, whether are a second residence (and not let out) or let out to private individuals.

The taxpayer reports the cadastral revenue. The tax is calculated on the cadastral revenue  $\times 1.863^1 \times 1.4$ .

If the tenant is a company or an individual who uses it for a business, the owner must declare the rent he receives. He cannot deduct any expenses for repairs or maintenance, but 40% is deducted automatically to cover such expense (however, that 40% deduction is limited to 3.05 times the cadastral revenue).

Until this year, one could still deduct overseas taxes, but that is not possible anymore.

In practice, the rental income from foreign property is not taxed, as Belgium must exempt that rental income under the double tax treaties Belgium has signed with more than 90 countries.<sup>2</sup> However, the Belgian tax authorities can take account of that income to determine the tax rate on other taxable income.

Belgium gives treaty relief by way of "exemption with progression". This means that Belgium adds the income from the property to the taxpayer's other taxable income to calculate the average tax rate. Belgium applies the tax rate that applies to the income that is taxable in Belgium but exempts the overseas income.

This pushes the Belgian remuneration or pension in the higher tax brackets. The impact is not the same for all taxpayers, as it depends on the amount of other income; taxpayers without taxable income will not feel the effect.

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<sup>1</sup> 1.8492 for 2020; 1.863 for 2021.

<sup>2</sup> If there is no double tax treaty, the tax on the property is halved.