



Federal
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FINANCE

**SPECIAL TAX
INSPECTORATE**

Risk and tools used to deal with Offshore Structures in Belgium

Focus on the Belgian tax regime which targets the individuals ultimately holding those structures

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Introduction : international unit & private legal structure units

- **Two units** within the Special Tax Inspectorate dedicated to the detection, study and taxation of offshore entities:
 - One in charge of **international tax audits for companies** (in regard with treaty abuse, CFC rules, lack of economic substance, artificial transactions, TP aspects, etc.) - Team 5.1. in Brussels – head: Nathalie Czestochowski
 - Another in charge of the **natural person** which have set up “ legal structures” (e.g. Trusts, very favourably (or 0%) taxed companies with little or no relevant substance, etc.) - Team 5.2. in Brussels – head: Mathieu van Overeem
- Both units equally give special attention to **investments pertaining by Belgian residents held abroad.**
- Consists of permanent agents and agents working for other departments within the Special Tax Inspectorate in order to stimulate **knowledge sharing** and promote a **multidisciplinary approach.**
- Both units work closely with **Input Central** department of the Special Tax inspectorate, **which is responsible for receiving, centralizing, processing and selecting all fraud indicators with a national or international dimension.**
- Exponent of the **cross functional approach** of the Special Tax Inspectorate : a comprehensive review of the situation of the taxpayer with attention to all sorts of taxes : direct (income taxes), indirect (VAT), inheritance tax, withholding taxes, etc.



What are the tax risks observed?

- Unreported or misreported foreign movable income
- Transfer of residence to a non-cooperative jurisdictions or transfer shortly before or after a change of tax residence
- Transfers labelled as loans, reimbursements, redemption or capital contributions while constituting taxable income
- Payments to or via Tax Havens
- International transfers that benefit a legal entity with opaque ownership or hide the ultimate individual beneficiary



What are the tools used to address observed risks ?

- **Risk - Unreported or misreported foreign income:**
- **Tools: Obligations to report in the yearly tax return (i) foreign (im)movable income, (i) foreign bank accounts & life insurance (to tax authorities and to the Central Point of Contact of the National Bank of Belgium), (iii) foreign legal structures**
- The tax audit teams work closely with data miners and the data warehouse managers to determine case selections. We **cross-check data from the CRS with mandatory reporting's** (the annual income tax return, in particular the specific code for declaring foreign movable income; the monthly returns relating to the tax on stock exchange transactions; and the annual tax return for securities accounts) **and others reporting's received from foreign tax authorities.**
- Where a discrepancy in income is identified (for instance, where a difference of more than EUR 100,000 in interest/dividend income is observed between the CRS data and what has been reported), a request for information is sent to the taxpayer.
- If, for instance, a taxpayer invests in foreign private equity and we do a tax adjustment, the information is fed back to the data miners, and any other taxpayer linked to that private equity fund is selected if their investment exceeds x million euros (as the tax stake is likely to be greater than EUR 100,000).



What are the tools used to address observed risks ?

- Risk - Transfer of residence to a non-cooperative jurisdictions or transfer shortly before or after a change of tax residence
- Tools: Pre solvency audit + Obligation to file a special tax return within 3 months + Exit tax regimes introduced to secure Belgian taxing rights
- N.B. Before each case selection, a **preliminary investigation** is carried out into the taxpayer's known situation & a **solvency audit is conducted** and, where appropriate—if the taxpayer presents a risk of leaving the country or of deliberately organizing insolvency— we contact the tax collection officers to place a 'memo note' on the immovable property located in Belgium that is owned by the taxpayer. In practical terms, the property can no longer be sold and/or Belgium may secure a minimum amount from the sale price as collateral for an existing or future tax debt.
- An assessment is also made with regard to the selection of cases in which the taxpayer has already officially left Belgium and no longer owns any property in Belgium: if the taxpayer has moved to a country that does not cooperate for tax and/or criminal matters, we consider that it is not an efficient use of resources to pursue a theoretical tax assessment that will never be recoverable or recovered.



What are the tools used to address observed risks ?

- Risk - Transfer of residence to a non-cooperative jurisdictions or transfer shortly before or after a change of tax residence
- Tools : Belgian legislation has also recently introduced three exit-tax regimes:
 - Exit tax applicable to shareholders when a Belgian company transfers its seat abroad (as from 2025) : when/if a Belgian company transfers its statutory seat abroad, its shareholders will be deemed to receive a liquidation dividend– even if they remain in Belgium and receive no actual payment.

This legal fiction is applicable regardless of whether the shareholder is a Belgian-resident individual, a Belgian company or legal entity or a non-resident.

The tax due depends on the shareholder's status, but in most cases, Belgian residents will be taxed at 30% on this fictitious dividend, unless exceptions apply.

If the relocation is to an EU or EEA Member State with which Belgium has a mutual assistance agreement for tax collection, the shareholder may opt for a five-year deferral: 1/5th payable immediately; the remaining 4/5ths spread equally over four years. This deferral must be requested within two months following the issuance of the tax assessment. It is a cash flow relief measure – not a tax exemption – and cannot be extended further. The law also introduces a partial relief from double taxation. If the company later distributes dividends drawn from the transferred assets and the shareholder can prove the link, the initial deemed dividend may be exempted.



What are the tools used to address observed risks ?

- Risk - Transfer of residence to a non-cooperative jurisdictions or transfer shortly before or after a change of tax residence
 - The “Legal structure Tax” (as from 2024) includes an exit tax designed to tax undistributed profits and latent gains of foreign legal structures (trusts, low-tax companies) when a founder moves their tax residence abroad or transfers the structure's assets out of Belgium. It triggers a 30% tax on accumulated reserves, treated as a dividend. This exit tax cannot tax undistributed profits accrued during periods when the founder was not a Belgian tax resident and this exit tax does not apply if the legal structure can demonstrate sufficient economic substance (employees, equipment, buildings). If the legal structure is within the European Economic Area (EEA), payment can be spread over time.
 - Exit tax applicable to individual which have invested in financial assets (as from 2026): Belgium has introduced a new exit tax regime on financial assets, taxing unrealized capital gains when a taxpayer ceases to be a Belgian tax resident. This tax treats assets as sold, with a 10% tax rate generally applied to capital gains on financial assets (shares, bonds, funds). A €10,000 exemption exists for small investors. An automatic deferment of payment applies for two years if moving within the EEA or to countries with a suitable tax treaty (e.g. information exchange program). No tax is due if the taxpayer returns to Belgium within 24 months.



What are the tools used to address observed risks ?

- Risk - Transfers labelled as loans, reimbursements, redemption or capital contributions while constituting taxable income
- Tools: TP/CFC rules/GAAR or Specific AAR/Simulation or non-genuine arrangement
- The Belgian tax law provides a substance-over-form approach.
- Requalification of the transfers possible in professional income, movable income or diverse income for natural person.
- **Application of general anti-abuse measures or specific anti-abuse measures:** i.e. A legal rule that empowers the tax authorities to disregard, recharacterize, or neutralize legal acts or arrangements which, while formally compliant with the law, are essentially aimed at obtaining a tax advantage contrary to the purpose or intent of the tax legislation and are not justified by valid commercial reasons reflecting economic reality.
- Application of simulation or the concept of a non-genuine arrangement : **simulation** is when contracting parties draw up two deeds, one of which contradicts the other or adds or makes provisions to it that are not intended to be disclosed to third parties. **A non-genuine arrangement** is an arrangement or a series of arrangements which, having regard to all relevant facts and circumstances, is not put in place for valid commercial reasons that reflect economic reality, and whose essential purpose or one of its essential purposes is to obtain a tax advantage.



What are the tools used to address observed risks ?

➤ Risk - International transfers that benefit a legal entity with opaque ownership or hide the ultimate individual beneficiary

- **Tools:** Use of applications and data to link individuals to businesses they own or control, we use mainly:
 - **DIOS** (an intern platform which cross information/data known inside FPS Finance (such as Sitran; E Not; Taxi; BIZTAX, etc.);
 - **BORIS** or “Beneficial Ownership Register Interconnection System” which is a tool for linking national central registers containing information on the beneficial owners of companies and other legal entities, trusts and other types of legal arrangements. The participating countries are as follows: Belgium; Germany, Greece, Spain, France, Cyprus, Latvia, Luxembourg, Hungary, Netherlands, Austria, Portugal, Romania, Finland, Sweden, Iceland & Gibraltar.
 - **The Belgian UBO;**
 - **Orbis platform** (bureau Van Dijk) : Database on private companies (which links individuals to businesses): it covers listed and unlisted companies, banks, non-bank financial institutions, insurance companies, vessels, sole proprietorships, funds, individuals, shareholders, beneficial owners, and subsidiaries;
 - **Common reporting standard** (CRS) : specifically, the sections “account holder organization/entity” with the “other controlling person” and the type of controlling person;
 - **Open data from local business register**
 - **ICIJ data or information obtained in the context of cooperation with a criminal investigation**
 - **Tax return**



What are the tools used to address observed risks ?

➤ Risk – Payments to or via Tax Havens

- **Tools:**
- Obligation to report payments made to tax havens by Belgian legal entities (Form 275F)
- Non-deductibility of expenses unless economic reality is proven.



Legal measures to encourage the submission of required documents by the taxpayer

- Individual taxpayers must, in their annual income tax return, specifically report:
 - foreign immovable (real estate) income;
 - foreign movable income (dividend, interest and as from the 2026 income year, capital gains) that has not been subject to Belgian withholding tax and for which declaration is mandatory;
 - the existence of bank accounts held with financial institutions established abroad;
 - the existence of life insurance contracts concluded with an insurance company established abroad; and
 - the existence of a ‘legal structures’ of which they are the founder or a beneficiary
 - Income perceived or distributed by a “legal structure”



Legal measures to encourage the submission of required documents by the taxpayer

- The taxpayer must furthermore personally file **a reporting** to the Central Point of Contact of the National Bank of Belgium **regarding the opening, closure, or holding of a bank account or a financial contract** concluded with a financial intermediary established abroad.

It is a **genuine register of financial accounts and contracts** concluded by Belgian taxpayers.

It may be consulted in the context of a tax investigation only under very specific conditions.



Legal measures to encourage the submission of required documents by the taxpayer

- Before 2024, the taxpayer was only required to report in the tax return the name and address of “legal structure” which falls into the scope of the “legal structure tax”, its identification number, the identification of the administrator and that administrator’s address, etc. **Problem ?** → Difficulty in determining the taxable and non-taxable income of these structures.
- Since 2024, for “**legal structures**”, the Belgian legislator has introduced a **new annex** to the annual personal income tax return requiring the separate disclosure of the following elements:
 - **the income obtained through the ‘legal structure’, separately;**
 - **the amount of the legal structure’s assets at the end of the taxable period** (also relevant for the annual tax on securities accounts, which likewise applies by transparency on this entities);
 - **the portion of the assets of the legal structure that was contributed by the founder;**
 - **the (deemed) dividends distributed, including those exempt** (with a breakdown between taxable and non-taxable income, which also facilitates the identification and challenge of income that the taxpayer considers as non-taxable);
 - the dividends that do not have to be included in the return because they were subject to a withholding tax.
- The failure to report such legal structure is subject to an **administrative fine of EUR 6,250 per year, per legal structure and per ‘founder’.**



“Legal structure tax” : Belgian tax regime which targets the individuals ultimately holding those structures

- The **Legal structure tax** is a tax measure introduced in 2015 (amended in 2016, 2017 and 2023) designed to combat tax evasion by Belgian residents who hold “**legal structures**” established abroad: Three types of legal structures are covered:
 - **Type 1: Trust**
 - **Type 2: Untaxed or lightly taxed foreign entity with legal personality**
 - **Type 3: Contract which has as underlining asset one or more legal structure of type 1 or type 2**
- Belgian residents deemed to be the “**founders**” of such a legal structure **will be taxed transparently on the income received by the legal structure** as if they had received it directly and independent of any actual distribution (i.e. “tax without cash”).
- In addition, **all distributions made by a legal structure to a Belgian resident (whether or not they are founder) will be considered taxable as dividends** unless the taxpayer can prove that the distributed income has already been “taxed in Belgium” or if the distribution relates to capital initially contributed by the founder.



“Legal structure tax” : which entity is subject to the tax?

Type 1: Trust

- Legal relationship with (generally) no legal personality;
- Assets held in the name of the trustee/administrator;
- Segregated estate

Type 2: Untaxed or lightly taxed foreign entity with legal personality

- **Legal entities established outside the EEA** when they are not subject to a local income tax, or subject to an income tax that is lower than 15% of a taxable base determined according to Belgian tax rules.
- **Legal entities established within the EEA** are not considered as legal structures, **unless**:
 - they qualify as a **dedicated fund (UCITS/AIFs where 50% of the rights are held by one person or linked persons)**;
 - they qualify as a **hybrid entity (entity with legal personality but the taxation is done in the hand of the shareholders (for instance STAK in the Netherlands))**; or
 - they are subject to **no income tax** or to an income tax amounting to **less than 1%** of their taxable income determined in accordance with Belgian tax rules.

Which taxes are taken into account?

- Genuine local income taxes and Belgian withholding taxes.
- **Not included**:
 - Lump-sum taxes that are not income taxes.
 - Subscription taxes.
 - Other miscellaneous taxes.
 - Wealth taxes.



“Legal structure tax” : who are the founders ?

- **Only individuals** and entities subject to the **Belgian legal entities tax** can qualify as founders, **not companies** subject to corporate income tax.
- **Five categories of founders:**
 - The person who **established the legal structure**;
 - The person who **contributed assets or rights** to the legal structure;
 - The person's **direct or indirect heirs** (unless they can demonstrate that they will not derive any benefit from the structure);
 - The holder of the **legal or economic rights** in the structure;
 - The person who **entered into the agreement** and in whose name the premiums were paid
- **Persons recorded in UBO Register as beneficiaries of a legal structure are presumed to be founders of that legal structure, unless proven otherwise.**



“Legal structure tax” : key features

- **Look-through mechanism**: income earned by the legal structure is deemed to be earned directly by the founder of the legal structure and is taxed in that person's hands, in the ordinary personal income tax, as if the legal structure did not exist.

Key consequences:

- **Character and rate are preserved**: The income keeps its original nature — dividends, interest, capital gains, rents — and is taxed under the rule applicable to that category (e.g. 30% movable withholding-type rate on dividends/interest).
- **Timing**: Taxation occurs when the legal structure *receives* the income, regardless of whether it is distributed to the founder
- **Multiple founders** are each taxed pro rata to their contribution; failing proof of the split, in equal shares. These allocation presumptions are rebuttable.
- **Distributions remain separately taxable**: transparency on the *received* income does not prevent from taxing amounts later *distributed* by the legal structure as dividends but anti-double-taxation relief exists for income that was already taxed by transparency.

Escape clauses:

- **substance in a cooperative State** — the construction is established in a State with which Belgium has a double tax treaty or exchange-of-information instrument, **and** it carries on a **substantial economic activity** (staff, equipment, goods, premises) that is **not** aimed at managing the founder's private wealth;
 - the income is already taxed in a **Belgian resident company under the CFC rule** ;
 - the income is already taxed in the hands of **another founder**.
- **Tax on distribution** : Income that has undergone its normal Belgian Tax regime through the Legal structure tax by transparency are exempt from taxation when this same income is at a later stage distributed as a dividend by the structure to its founders. Goal is to avoid double taxation. New amendment from 2024: amounts distributed from tax-exempt or non-taxable income sources are subject to dividend taxation.
- **Exit tax** : In order to avoid the loss of taxable matter by a relocation of the founder(s) (only structures held by Belgian residents can be in scope of the Legal structure Tax), the moment of the relocation all non-distributed profits held by the structure at that moment shall be considered to be distributed to the founder and thus taxable as a (fictional) dividend.



“Legal structure tax” : what about chain structures?

From 2018 to 2023, the Legal structure tax focused on **chain structures**: if a legal structure is a parent structure, the income received by a subsidiary legal structure is taxable, pro rata the participation percentage of the parent in the subsidiary, as if the parent had directly received that income. → application of the look-through mechanism on chain structures

Problem? The whole mechanism required each upper tier to itself be a legal structure (i.e. itself low-taxed / a trust-type relationship). If the founder interposed an entity that was **not** a legal structure — typically a normally-taxed EEA holding company — between himself and a low-taxed "subsidiary", the definitional chain of "parent construction → subsidiary construction" could be argued to be broken, potentially defeating the look-through mechanism.

Since the 2024 reform, Belgium has replaced the notion of "parent structure" with the broader "**intermediate structure**" and re-cast the transparency rule so that an **interposed entity that is not itself a low-taxed legal structure can no longer break the chain**.

As a result, a Belgian founder may be subject to the « Legal structure tax » even where the legal structure is held indirectly through several foreign companies, partnerships, funds or other intermediary vehicles.



Interaction between “Legal structure tax” and Double Tax treaties

Does a treaty stop Belgium taxing a resident founder on income earned by a foreign legal structure?

Our administration's answer (Circ. 2024/C/79): No, based on two arguments:

- **Double tax treaties are intended to eliminate juridical double taxation, not economic double taxation:** Founder and construction are *different taxpayers* → economic double taxation, which treaties only address in Art. 9 (associated enterprises). Reinforced by a **CFC analogy** (OECD Comm. Art. 7, §14: a State may tax its own residents under CFC-type rules).
- **"Residual income" characterisation:** Income genuinely **isn't "paid"** to the founder (the look-through mechanism occurs **on income received** by the legal structure) → Arts. 10 (dividends) / 11 (interest) don't apply → the relevant treaty provision must be examined from the founder's perspective. This leads often to the application of the treaty's residual income article (« other income »), which allocated taxing rights to the State of residence of the founder = Belgium

CONTRA ? (i) ok with EU freedoms ? (ii) Via the look-through mechanism, the founder is taxed "*as if he received the income directly*", preserving the nature of the income — so the **dividend / interest / capital-gains articles arguably should apply** and cap or reallocate Belgium's right. It can be argued that we read transparency for domestic law but *not* for treaty characterisation.



THANK YOU FOR LISTENING !

