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BELGIAN TAXATION

An Outline

Kluwer

Distribution in the USA and Canada
Kluwer Law and Taxation Publishers
101 Philip Drive
Norwell, MA 02061
USA

LIBRARY OF CONGRESS

Library of Congress Cataloging in Publication Data

Tiberghien, Albert, 1915–
[Belgische belastingen in kort bestek. English]
Belgian taxation: an outline/by A. Tiberghien.
p. cm.
Translation of: De Belgische belastingen in kort bestek.
Includes index.
ISBN 9065443428
1. Taxation—Law and legislation—Belgium. I. Title.
KJK3550.T513 1987
343.49304—dc19
[344.93034]

87-26062
CIP

D/1987/2664/96

ISBN 90 6544 342 8

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Preface

This is the fifth edition (the four previous editions were in Dutch) of a successful booklet which tries to give a comprehensive survey of all Belgian taxes.

In Belgian economics, taxes tend to occupy a place which is far more important than in most other industrialized countries. The total burden (taxes and social security contributions) on the G.D.P. amounted to 46.7% in 1984, putting Belgium in the third position of all OECD-countries. Belgium thus ranks after Sweden (50.5%) and Denmark (47.0%), far above the United Kingdom (36.0%) and very far above the USA (29%).

In 1987 the state taxes and the local taxes (actual taxes) will total approximately BF million 1,600,000 (social security contributions not included), thus bringing the total amount of taxes (social security contributions included) close to BF million 2,500,000.

It is important for anyone residing or doing business in Belgium to have at least a general knowledge of the Belgian tax system. This booklet does not pretend to be exhaustive. The texts of the law alone would fill more than thousand of these pages, and for the documentation to be complete we would need ten thousands of pages! Nevertheless, all taxes have been described, at least in outline and stating the principal rates.

This booklet is a 'manual', not a reference work which could serve to solve a specific problem; indeed, nearly every sentence ought to be completed (mentally) with the words: 'except for many deviations from this rule and considering all kinds of conditions and formalities'. The text is up to date to 1 September 1987.

It would have been impossible to publish this book without the collaboration of

- the staff of TIBERGHIE & CO, Tax Consultants in Brussels, and especially of:
 - Mrs. Martine Helleputte, licentiate Germanic Philology, who translated the Dutch text,
 - Mr. B. Bruggeman and Mr. A. Bax, tax lawyers, and Mr. M. Van der Planken, tax accountant, who were responsible for updating different parts of the book,
- and of Mr. Stephen Janaway, who revised the translation,

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to all of whom I am very indebted and to whom I would like to express my sincere thanks.

A. Tiberghien

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I. Introduction

Paragraph 1. The System of Taxation

In Belgium, nearly all taxes are levied by the State, the provinces and the municipalities. Taxes paid for instance to the Brussels agglomeration are comparatively of too little importance to be dealt with within the scope of this booklet.

A. Government Taxes

Three separate departments of the Ministry of Finance engage in the imposition and the collection of three groups of taxes. Next to these three works a fourth department, the 'Administration of the Special Tax Inspection' (Inspection Spéciale des Impôts/Bijzondere Belastinginspectie*), which is especially qualified for control (yet can also assess taxes in pursuance of this control).

1. TAXES LEVIED BY THE 'ADMINISTRATION OF DIRECT TAXES'

(Administration des Contributions Directes/Administratie der Directe Belastingen)

The four Income Taxes (Impôts sur les revenus/Inkomstenbelastingen) and the three 'taxes assimilated to the income taxes' (Taxes assimilées aux impôts sur les revenus/Met inkomstenbelastingen gelijkgestelde belastingen) belong to this group. The expression 'assimilated to' merely indicates that the rules of procedure of the income tax also apply to these three taxes.

a. Income Taxes

- The *Individual Income Tax* (Impôt des Personnes Physiques/Personenbelasting) is computed on the worldwide income of individuals who are actually resident in Belgium.
- The *Corporation Tax* (Impôt des Sociétés/Vennootschapsbelasting) applies to the profits of corporate bodies which are established in Belgium and pursue profit.

*The French and Dutch original wordings are incorporated within parentheses throughout.

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- The *Tax on Legal Persons* (Impôt des Personnes Morales/Rechts-personen-belasting) applies to the public bodies, to associations and to all non-profit corporations.
- The *Non-Resident Tax* (Impôt des non-résidents/Belasting der niet-verblijfhouders) covers Belgian income of individuals and legal persons who do not have their residence in Belgium but have property or other interests in the country.

b. Taxes Assimilated to the Income Tax

As already mentioned, these are definitely not income taxes, and not even direct taxes; they are only called ‘assimilated to the Income Tax’ because they are levied by the same Tax Department.

These are:

- Motor Vehicle Tax
- Duty on Betting and Gambling
- Amusement Machines Tax

2. TAXES LEVIED BY THE ‘ADMINISTRATION OF VAT, REGISTRATION AND DOMAINS’ (Administration de la TVA, de l’enregistrement et des domaines/Administratie van BTW, registratie en domeinen)

These are:

- Value-added Tax (VAT) (Taxe sur la valeur ajoutée-TVA/Belasting over de toegevoegde waarde-BTW)
- Registration Duties (Droits d’enregistrement/Registratierechten)
- Mortgage Duties (Droits d’hypothèque/hypotheekrechten)
- Court Duties (Droits de greffe/griffierechten)
- Estate Tax (Droits de succession/successierechten)
- Stamp Duties (Droits de timbre/zegelrechten)
- Taxes assimilated to the Stamp Duties. (Taxes assimilées au Timbre/Met het zegel gelijkgestelde taksen)

This is a group of 6 taxes:

- Transfer Duties on Bonds and Shares
- Hunting Duties
- Duties on Insurance Policies
- Duties on Stock Exchange Listed Securities
- Advertising Tax
- Special Vehicle Transfer Tax (Taxe d’immatriculation/Inschrijvingstaks)

3. TAXES LEVIED BY THE 'ADMINISTRATION OF CUSTOMS AND EXCISE' (Administration des douanes et accises/Administratie van douane en accijnzen)

These are:

- Customs Duties (Droits de douane/Douanerechten)
- Excise Duties (Droits d'accise/Accijnzen)
- Café Licence Duties

B. Provincial and Communal Taxes

The revenues of the provinces, of the municipalities and of the Brussels agglomeration principally emanate from surcharges on certain state taxes, mainly the surcharges on real estate tax, on individual income tax and on motor vehicle tax.

Moreover, special taxes are being levied on the most varied objects (bicycles, boats, dogs, motive power, staff, petrol pumps, taxis, etc.)

Nota bene: Belgium does not have a wealth tax (other than estate tax) or a business tax that could be compared with the German 'Gewerbsteuer'.

Paragraph 2. Tax Revenue

The comparative importance of taxes can probably best be measured according to their revenue. The list stated below has been drawn up on the basis of the 1987 budget. We have followed the order of importance, in 'BF millions':

– Taxes on the income of physical persons and corporations (including withholding and estimate taxes):	881,630
– VAT	397,900
– Excise Duties (especially on oils, tobacco, spirits, wine, beer):	107,820
– Registration Taxes (especially on the sale of real estate)	25,865
– Customs Duties (this is an EEC-tax)	23,286
– Motor Vehicle Tax	21,450
– Estate Tax	12,800
– Betting and Gambling Duty	2,090
– Amusement Machines Duty	880
– Licensed Café duties	722
– Court duties	538
– Tax on Non-profit Associations	537
– Mortgage Duties	420
– Sundries	2,310
	<u>1,477,688</u>

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Taxes of the provinces and the municipalities as well as social contributions:

– Local Taxes (est.):	110,000
– Social Security Contributions (est.):	850,000

We thus arrive at the total amount (taxes and social contributions) more than BF 2,400,000 million, that is about 47% of the Gross Domestic Product (GDP). This puts Belgium in the third place (1984) of the OECD-countries, after Sweden and Denmark, ahead of Norway and The Netherlands. (UK 38.5%; USA 28.99%).

Paragraph 3. Structure of the Tax Administrations

Taxes fall within the competence of different tax administrations. Even the state taxes, as mentioned before, are the responsibility of five departments of the Ministry of Finance.

A. Governmental Taxes

All governmental taxes fall within the competence of the Ministry of Finance, headed by the Minister of Finance (Rue de la loi/Wetstraat 12, 1000 Brussels, tel.: (02) 233 81 11), who is one of the ministers of the King, head of the executive power.

The principal tax department, the 'General Administration of Taxes' (presided over by the 'General Administrator' covers and coordinates

- the three Administrations each specialised in a tax group:
 - The Administration of Direct Taxes
 - The Administration of VAT, registration and domains
 - The Administration of Customs and Excises
- and moreover a special department which is authorized to carry out miscellaneous control activities: the 'Administration of the Special Tax Inspection'.

At the top of all the departments of the Ministry of Finance (this Ministry also includes other departments than the tax departments, such as e.g. the 'Administration of the Land Registry') is a 'general secretary'. Each single department is presided over by a 'general director', who in turn is assisted by 'general inspectors' advisers and assistant advisers'; together they supervise the field services, which are organized on the provincial level and consist of directors, inspectors, controllers and collectors, and their assistants.

The central directions of the three principal tax departments are located in 'Tour des Finances', Boulevard Botanique 50 ('Financietoren', Kruidtuinlaan 50) 1010 Brussels, tel.: (02) 210 21 11.

In principle, these three tax administrations work almost completely independently of each other. Thus for example, the officer of income tax is not

competent in matters regarding VAT or estate duties. Yet these independent services do exchange information among each other, and now and then the conclusions of one service may be binding upon the other ones (e.g. some income tax valuations will hold automatically for the application of VAT or vice-versa). They also tend toward cooperation in the sense of joint audits.

Schematically, the organization and working of the field services is as follows (for each of the three services separately):

- At the top of the provincial tax service is a ‘regional director’
- The province is subdivided in ‘inspector services’ headed by ‘inspectors’
- The inspection services are subdivided in ‘control services’ and ‘collector’s offices’, headed by controllers and collectors respectively.

The regional directors decide on disputes, the inspectors examine the disputes and manage the controller’s and collector’s offices as a whole, the chief controllers impose the assessment and the collectors collect the taxes.

As there are all sorts of variations possible, this outline remains theoretical to a certain extent.

Examples: There are 14 districts, for the 9 provinces, for direct taxation and only 6 districts concerning customs and excise duties. Registration Taxes and estate duties are not imposed by chief controllers, but by tax collectors, who thus fill the double post of taxing and collecting officers.

B. Provincial Taxes

The collection of the direct provincial taxes falls entirely within the competence of the services of the ‘Administration of Direct Taxes’. Indirect taxes are collected by the provinces themselves.

C. Communal Taxes

Establishing and collecting the taxes as well as the penalties falls within the competence of the communal collectors. The municipal surcharges on the state taxes form an exception: as a rule, the ‘Administration of Direct Taxes’ itself assesses and collects the surcharges together with the state taxes.

D. Agglomeration, Communities and Regions

The tax department of the Brussels agglomeration is in some degree comparable with a communal tax service. The communities and regions scarcely ever make use of the facilities to develop their own tax system.

Paragraph 4. Legislation and Legal Principles

Tax legislation is ruled by the Belgian Constitution. Along with and even beyond the Constitution, EEC-treaties and the Convention for the Protection of Human Rights are self-executing and take precedence over the law.

Belgian taxes are the object of eight codes of law, as well as of many separate laws and decrees.

The codes are:

- Income Tax Code
- Code of Taxes Assimilated to Income Taxes
- VAT-Code
- Code of Registration Taxes, Mortgage Duties and Court Duties
- Code of Estate Taxes
- Code of Stamp Duties
- Code of Taxes Assimilated to Stamp Duties
- The General Law concerning Customs and Excise Duties

The main principles of the tax law, notably the principles relative to the legality, the interpretation and the choice of the 'least taxable way', are the following:

The state taxes can only be imposed by law. The King is only entitled to execute the tax law, with the exception of the cases where the legislator explicitly endows him with a wider competence. The provinces and the municipalities possess their own 'free' tax competence. However this freedom is restricted because:

- a. the law prohibits certain taxes (e.g. on cattle, income).
- b. the central government (for example the Minister of Home Affairs) has to give its approval. It sometimes refuses to give this approval in cases where the local tax is excessive, or in defiance of elementary legal principles, or deviates from the Minister's directives, or does not keep up tradition.

The tax law has to be interpreted 'textually'. This does not mean that the interpretation has to be literal, but rather that a definite provision should be read as a whole and in the context of the other provisions of the tax legislation, and even of the general laws, which rule the tax law as long as this does not explicitly deviate from the general laws.

When the textual interpretation is obvious, other interpretations should not be searched for. The intention of the legislation should be examined only when the text is not clear. Yet this intention must not be searched for beyond the preparatory activities of the law. This means that an interpretation based on analogy or presumed legislative intentions is not allowed. If the text remains obscure after exhaustive attempts at interpretation, it has to be interpreted in favour of the taxpayer (exception: shelters, exemptions, deductions and reductions are to be proved by the taxpayer). The taxpayer is allowed to choose the cheapest way of taxation, which does not mean that he should be allowed to do so with fraudulent means. He does have the right to place himself in a position where the application of taxes becomes impossible, either by not performing a taxable action, or by replacing a taxable action by one that is not taxable at all or

only taxable to a lesser extent. Yet, if the taxpayer uses tax loopholes, he is not to commit simulation; when he sets up a legal construction, it must be real and the taxpayer must accept the legal consequences resulting from it. This construction need not be the most normal one; neither need it be made for other than tax purposes. As to the territoriality principle, there are no cases where the citizenship of an individual, and few cases where the official seat of a corporation are considered: only the 'de facto' residence or seat are important.

II. Income Tax

There are four income taxes:

- Income tax of individuals (Individual Income Tax)
- Income tax of corporations (Corporate Income Tax)
- Income tax of corporate bodies (Tax on Legal Persons)
- Non-resident Tax

The name 'Income Tax' covers the four direct taxes as a whole, as opposed to other countries (e.g. the UK and the USA), where the income tax is the tax imposed upon the whole of the income of individuals, and where there is only one other tax on income: the corporate income tax.

Besides, a distinction between these four taxes should be drawn without attaching too much importance to their names. The first three taxes apply to taxpayers who have their tax residence in Belgium, the fourth tax applies to taxpayers (individuals, corporations, public bodies, etc.) who have their tax-residence abroad.

On the other hand, though corporate income tax and tax on legal persons are both related to corporate bodies, corporate income tax applies to corporations established in Belgium and organizations pursuing profit, whereas tax on legal persons applies to Belgian non-profit organizations (including public bodies).

The difference can be summarized as follows:

- Individual Income Tax applies to the world-wide income of physical persons who have their tax residence in Belgium.
- Corporate Income Tax applies to the profits of corporate bodies having their tax residence in Belgium, either de jure or de facto and acting for profit.
- Tax on Legal Persons applies to Belgian corporate bodies that do not act for profit (such as the Government, the provinces, the municipalities, the other public institutions, the non-profit organizations, the public utility services, etc.).
- Non-resident Tax applies to income acquired in Belgium by physical or legal persons having their tax-residence abroad.

Yet, the rules of individual income tax are to a great extent applicable to corporations and other bodies and to non-residents. E.g. the rules with respect to the determination of taxable income, business expenditure, depreciations, capital gains, are enumerated in texts regarding individual income tax, but they are just as relevant to corporation tax and to non-resident tax.

An important part of the taxes is collected by means of withholding: this means tax levies which are mostly withheld at source.

Most of these withholding taxes are refundable, even when the taxable minimum is not reached or when the business result is negative. The real estate tax to a certain extent cannot be refunded.

Paragraph 1. Individual Income Tax

A clear distinction has to be made between the different income categories.

Particular rules apply to each category (and its components) both for the computation of taxable income (e.g. the different standard deductions) and for the calculation of the tax itself (e.g. surcharges as a result of default in estimate tax payments are assessed only to the tax relating to some business income).

The categories are:

1. *Real estate income*
2. *Income from investments other than real estate*
3. *Business income*
 - a. profits from manufacturing, trading and agricultural industries.
 - b. – salaries of employed individuals, including pensions and annuities.
 - directors' fees and fees paid to liquidators of stock corporations, and to other persons filling similar positions.
 - salaries of active partners in personal corporations.
 - c. the profits of lucrative activities that do not fit in the categories a. or b., particularly of the professions;
 - d. the profits relating to a self-employed occupation formerly practised by the beneficiary or received by a successor of such a beneficiary.
4. *Miscellaneous income* (viz. non-occupational speculation profits, the non-occupational income, prizes and subsidies, alimonies, non-occupational and non-speculative capital gains on land, capital gains on substantial shareholdings, etc.).

A. Income from Real Estate

The income from real estate is not, in principle, the real income but in most cases rather a notional income, named Cadastral Income.

The cadastral income is the normal yearly net income, valued in accordance with the rental value as at 1 January 1975, of a cadastral lot, and also of the equipment which is immovable by nature or by intention. The cadastral income of built-on land equals 60% of the rental value. The cadastral income is determined in the first instance by the Land Registry Department (principal directorate' Pachecolaan 34, 1000 Brussels, tel.: 02/219 00 05). This valuation can be disputed by means of a notice of objection and, after that, in court. In the latter