

## The New Belgian Government's Tax Program

by Marc Quaghebeur



Several months after Belgium's federal elections, five political parties have reached an agreement on a program for the coalition government they are forming. The coalition is dubbed the "Arizona coalition."

The name refers to the state flag of Arizona. It symbolizes the colors of the Belgian parties represented in the new government — blue for the French-speaking liberal Mouvement Reformateur party; red for the Flemish social democratic party Vooruit; yellow for the New Flemish Alliance; orange for the Christian Democratic and Flemish party and the centrist Les Engages party.

The new ministers took their oath of office on February 3. The prime minister of the federal government, Bart De Wever, is the leader of the New Flemish Alliance, a Flemish nationalist, conservative political party; the party strives for the peaceful and gradual transformation of Belgium into a confederation, but a state reform is not considered.

The government's program sets out the principles and main policies that will underpin its term in office. The historically detailed government agreement, several hundred pages in length, sets out strict guidelines for each minister and the life of the new government. Whether this

will work remains to be seen; there are already some dissenting voices on the capital gains tax that will be introduced.

The program consists of measures related to:

- corporate income tax and withholding tax;
- individual income tax and capital gains tax; and
- VAT, digital services tax, and other measures.

The full, final text of the agreement is available in Dutch and in French. Discrepancies between the Dutch and French texts had given rise to different interpretations. The main tax measures, which will, in principle, apply from 2026, are summarized below. The new government does not plan to introduce retroactive tax measures.

### Corporate Income Tax

#### Participation Exemption

The participation exemption (RDT — *revenus définitivement taxés*) is the Belgian answer to the EU parent-subsidiary directive 2011/96/EU; an eligible holding company is entitled to a full dividends received deduction and a full capital gains tax exemption. To qualify for the participation exemption, the parent company must hold at least 10 percent of the subsidiary's shares without interruption for at least one year. Alternatively, a shareholding under 10 percent can qualify if it has an acquisition value of €2.5 million. Further, the subsidiary must be subject to a normal tax regime.

If the parent company holds less than 10 percent of its shares, the subsidiary must withhold 30 percent tax. The parent company can then set this off against corporate income tax due on its taxable profit.

The required minimum shareholding for the participation exemption will be maintained at 10

percent, but the required acquisition value will increase from €2.5 million to €4 million. If the shareholding is less than 10 percent but more than €4 million, it must be recorded as a fixed financial asset, which implies that the shareholding is intended to contribute to the company's own activity and represents a durable link to the subsidiary.

That condition had been abandoned a few years ago because it was deemed to be contrary to the EU parent-subsidiary directive. It is now thought that this obstacle can be circumvented by linking the condition to the €4 million threshold that is not in the directive (it only has the 10 percent condition).

This means that shareholdings held purely as an investment will no longer qualify for the participation exemption. This will make it less appealing to enterprises to invest in listed companies because it will be difficult to demonstrate a durable link.

These new conditions will not apply to small and medium-size<sup>1</sup> enterprises or transactions between SMEs and large companies. It will only apply to transactions between large companies. The exclusion of SMEs may be an indirect way of excluding holding companies because the definition of middle-sized enterprise in the income tax code requires an economic activity. However, excluding companies without an economic activity and holding companies does not appear to be the intention.

The participation exemption that is currently a dividends received deduction will be converted into a dividends received exemption regime.

This may seem a mere technical measure, but the effect can be far-reaching. The dividends received deduction allows the parent company to deduct the dividends from its profits and carry forward excess dividends. If the dividends are exempted, new dividends can no longer be carried forward. This will have the advantage of avoiding numerous challenges before the EU's Court of Justice (for example, *Allianz Benelux SA v. Belgium*, C-295/21 (2022)).

<sup>1</sup> A middle-sized enterprise is an enterprise carrying on an economic activity with fewer than 250 employees, a turnover not exceeding €50 million, or a balance sheet total not exceeding €43 million.

The participation exemption allows companies to invest in shares of collective investment companies and make tax-free capital gains even if the company does not hold a participation of 10 percent or €4 million. These are called RDT SICAV (*Société d'investissement à Capital Variable*, similar to U.S. mutual funds) and are regularly used by companies to invest excess cash.

When the fund distributes dividends, they can qualify for the participation exemption and be deducted from the company's profits, unless they originate in dividends from companies that do not pay a normal level of corporate income tax for interest on bonds, fixed-income products, proceeds from the loan of shares, or regulated real estate companies. Furthermore, capital gains on these funds are tax exempt.

The government will introduce a 5 percent tax on capital gains on the sale of these shares. Also, the company will only be able to set off the tax withheld at source if it pays its directors a minimum remuneration of €45,000. This will be increased to €50,000, and the threshold will be index-linked.

### Corporate Income Tax Incentives

The investment deduction is designed to encourage SMEs to make productive investments. It gives the company the right to deduct a percentage of the acquisition value or the investment value. The investment deduction rate for assets related to energy, mobility, and the environment will increase to 40 percent. Unused investment deductions can be carried forward indefinitely.

Since 2020 companies have not been allowed to use the declining balance method of depreciation for their investments. SMEs will again be able to use this depreciation method. Some investments in research and development, defense, and the transition to clean energy will be eligible for accelerated depreciation. Large companies will be able to write off 40 percent of the value of the investment in the first year.

The government also plans to expand the tonnage tax regime to include innovative maritime transport companies with local economic activity, covering "multipurpose"

ships. It also includes introducing venture capital measures.

### Car Taxation

The government will maintain the maximum tax deduction percentage for hybrid cars at 75 percent until the end of 2027. It will then drop to 65 percent in 2028 and 57.5 percent in 2029 (in parallel with the reduction for electric vehicles). These deduction rates will apply as long as the vehicle is used by the same owner or lessee. Fuel costs for hybrids will remain deductible for 50 percent until the end of 2027. The cost of electricity for hybrids will be deductible in the same way as that for electric models.

### Corporate Income Tax Rate

The corporate tax rate is maintained at 25 percent with a reduced rate of 20 percent on the first €100,000 if conditions are met. As mentioned above for the participation exemption, the company must pay a minimum remuneration of €45,000 to its directors; this will be increased to €50,000, and the threshold will be index-linked.

This measure should make management companies less attractive, when combined with the measure relating to the RDT SICAV and the limitation of benefits in kind.

### Exit Tax

The emigration of a legal entity will be treated for tax purposes as a liquidation, and it may have to withhold tax as if there were an actual liquidation.

This issue has long been a bone of contention between the tax administration and the ruling committee. Tax authorities maintain that when a company emigrates, it is deemed to be wound up and its assets distributed among the shareholders. The company must then deduct 30 percent withholding tax if the shareholder is a Belgian resident. The government is now confirming this position.

### Exemptions

The new government plans to abolish a number of tax exemptions, for example, for social liabilities, the PC private plan, and capital gains on company vehicles.

### Group Taxation

Belgium has long been one of the few European countries that did not allow a tax consolidation between group companies. In 2019 a form of (limited) fiscal consolidation was introduced. It is an optional tax consolidation mechanism with a group contribution paid to a loss-making company that is tax deductible for the company that pays it.

It is intended that this group contribution regime will be made more attractive, more flexible, and administratively simpler. It will be extended to indirect participations, and new companies can qualify.

The plan also foresees that the scope of the participation exemption will be extended to profits derived from a group contribution. However, when the dividends received deduction becomes a dividends received exemption, this will become irrelevant.

### Company Deductions

The government will ensure that there is no longer any tax discrimination against donations of goods (except for certain categories such as alcohol) to charitable organizations approved by the tax administration. From the point of view of direct tax, donated goods will be considered to have lost all economic value. Companies will be able to deduct the cost price of these goods for tax purposes. Regarding VAT, a payer can already, under certain conditions, donate commercial goods to certain institutions approved by the tax administration while retaining the right to deduct.

The law stipulates that, from the first infringement, a tax surcharge of 10 percent is imposed, and the taxpayer loses the right to deduct previous losses and losses of the year from the corrected tax base. This penalty will now only apply to repeated offenses in which a tax increase of at least 10 percent is imposed, and no longer to good-faith errors or administrative oversights. On the other hand, taxpayers will only be barred from deducting losses of the financial year from the corrected tax base. Previous losses will remain deductible.

In the event of a first good faith error or administrative oversight, the taxpayer will not

longer have to submit a reasoned request; authorities will directly check whether the conditions for not imposing a penalty have been met.

### Withholding Tax

The government will harmonize the reduced withholding tax on dividends (under conditions) and the liquidation reserve regime. The profits booked on a liquidation reserve will trigger a 10 percent tax (in fact 10/110 of the profits, or 9.09 percent), and they are exempt when the company is wound up. However, after five years, the company can pay out the liquidation reserve and withhold 5 percent. The total tax is then  $(100 - 9.09) * .05 + 9.09 = 13.64$  percent. The required holding period for a liquidation reserve will decrease from five to three years. The withholding tax rate on the distribution of liquidation reserves will increase from 5 percent to 6.5 percent starting in 2026. Payments made within the three-year period will be taxed at 30 percent.

### Transfer Pricing Documentation

The new government intends to simplify the transfer pricing documentation rules, particularly for SMEs.

## Individual Income Tax and Capital Gains Tax

### Capital Gains Tax

The government announced a “general solidarity contribution” of 10 percent on future capital gains from financial assets, including cryptoassets, starting from the moment the tax is implemented. Historical capital gains are excluded. Capital losses will be deductible but only in the year they arise; they cannot be carried forward.

The government will introduce a general exemption of €10,000 and an exemption of €1 million for substantial participation of at least 20 percent. The tax will be progressive at the rates shown in the table.

### Capital Gains Tax Rates

Capital Gain	Rate
€0 - €1 million	0%
€1 million - €2.5 million	1.25%
€2.5 million - €5 million	2.25%
€5 million - €10 million	5%
Over €10 million	10%

### Personal Allowance

The government will increase the personal allowance (currently €10,910) for those who work and will modernize the additional allowance for dependent children.

### Deductions and Exonerations

The government plans to lower the deduction for maintenance payments from 80 percent to 50 percent and abolish it for payments to countries outside the EU.

It will also cut in half the marital deduction (currently €13,460). This is a tax technique that takes part of the income of the partner who has income and taxes it in the hands of the other partner. It reduces the tax between partners. For pensioners, the marital deduction will extinguish gradually over a longer period.

The federal mortgage interest deduction for dwellings that are not occupied by the owner (a second residence, a buy-to-let, will be abandoned.

The government will also harmonize the tax regime for savings deposit accounts if the EU's Court of Justice rules that the Belgian regime, which favors savings deposits with Belgian banks, is incompatible with the freedom to provide services. The Court has already decided twice that the exemption of part of the interest from savings deposits is contrary to the freedom to provide services (article 56 of the Treaty on the Functioning of the European Union and article 36 of the Agreement on the European Economic Area) in cases C-383/10 (2013) and C-580/15 (2017). The European Commission sent a reasoned opinion on July 14, 2024, and a formal notice of a referral to the Court on October 30, 2024.

## The Impatriate Tax Regime

The government intends to make the impatriate tax regime that was introduced in 2022 more attractive. The previous expat regime was used by 27,000 workers, but only 5,000 benefit from the impatriate tax regime. The government wants to attract and keep international talent by:

- increasing the lump sum tax-free allowance from 30 percent to 35 percent;
- abolishing the maximum allowance of €90,000 so that employees and managers with a salary of more than €300,000 can enjoy the full allowance; and
- reducing the required minimum gross annual taxable salary from €75,000 to €70,000.

## Individual Income Tax Incentives

The plan also promises a business deduction for the self-employed.

The current allocation of 30 percent of employment income to the nonworking spouse or spouse with a lower income (with a current maximum of €17,840) will be cut in half by 2029.

## Advance Tax Payments

The government will abolish the tax increase on insufficient advance payments for individuals earning professional income.

## Benefits in Kind for Company Directors

The government plans to limit the use of benefits in kind to 20 percent of the total of the director's remuneration package.

## Stock Options and Carried Interest

Contrary to most countries in which stock options are taxed when they are exercised, Belgium taxes options when they are granted. Employees and managers who receive stock options can, under certain conditions, benefit from a favorable tax regime and even a full exemption from social security contributions. The tax base is 18 percent of the fair market value of the underlying shares and (with certain restrictions) and 9 percent for options on shares of the employer's share capital if the employee cannot exercise the options in the first three years.

No tax is due when the options are vested, exercised, or when the options or stocks are sold.

The original plan was to introduce a solidarity contribution of 5 percent, but that was scrapped. Capital gains on the sale of the options will be targeted by the general solidarity contribution on financial assets (see above, Individual Income Tax and Capital Gains Tax section).

Belgium does not have a tax regime for carried interest earned by investment executives in private equity funds. Different types of structures are set up using partnerships and stock options.

The government will introduce a specific and competitive regime for carried interest compared with existing regimes in neighboring countries to stimulate fund activity in Belgium. This regime would provide for a maximum tax rate of 30 percent and would have no effect on existing plans.

## VAT, Digital Services Tax, and Others

### Digital Services Tax

The government wants to implement international agreements on a DST. Large digital multinationals will be liable to tax in Belgium even if they do not have a physical presence. The tax will respect the principle of a level playing field between Belgian and foreign companies operating in the national market. The tax will not increase the burden on Belgian companies compared with foreign companies.

This Belgian agreement comes after U.S. President Trump announced that the United States was pulling out of the OECD's global corporate tax plan and threatened retaliation against "discriminatory and extraterritorial tax measures."

The new Belgian government's position is clear: It prefers a solution at the international or European level, but it is willing to move unilaterally if that doesn't materialize.

### VAT Rates

The plans include temporarily reducing the VAT rate for the supply and installation of heat pumps from 21 percent to 6 percent for a period of five years. They will also increase the VAT rate for fossil fuel combustion boilers from 6 percent to 21 percent and for coal from 12 percent to 21 percent.

The new government will assess the effect of a revision of the EU's emissions trading system that extends it to buildings and road transport, and explore a tax shift on energy products (electricity, gas, oil) to support climate goals without increasing average household and business bills.

The government will extend the current 6 percent VAT rate for demolition and reconstruction.

### **Stock Exchange Tax and Tax on Securities Accounts**

The plans include simplifying and modernizing the stock exchange tax.

The 0.15 percent tax on securities accounts for over €1 million and will be maintained without any changes.

### **Charter of the Taxpayer**

Thirty-nine years after its introduction, the charter of the taxpayer has been largely forgotten. The new charter includes the harmonization of tax deadlines, the right to direct and personal contacts between the taxpayer and the tax authorities, the right to make mistakes when acting in good faith, the right to privacy, and the right to refuse entry to the home without specific justification or reason. It will also limit the duration of tax audits.

### **From Tax Mediation to Tax Arbitration**

The tax mediation department will be converted into a tax arbitration department to reduce the number of tax court cases.

### **Statute of Limitations**

The statute of limitations deadlines for tax investigations and tax assessments are set at three years (four years for complex and semicomplex returns) from January 1 of the tax year, except in cases of fraud (or suspected fraud). In the event of fraud, the time limit is set at seven years (eight years for complex and semicomplex returns) from January 1 of the tax year.

The plan does not clarify whether this will put an end to the 10-year investigation and assessment deadlines recently introduced.

### **Data Mining Despite Banking Secrecy**

The government plans to extend the information that banks must provide to the National Bank about bank accounts. Account balances held by the National Bank of Belgium can only be consulted by the tax authorities if there are indications of tax fraud, and it is on this point that banking secrecy has not yet completely ended.

Crypto currency accounts will also have to be declared. Financial data of foreign origin that has already been received automatically by the authorities will be incorporated into the information held by the National Bank, as will the accounts of online gamblers exceeding €10,000. More information will be integrated to enable comprehensive data mining.

A legal framework will be created for anonymous data mining of the data held by the National Bank with a view to selecting the files to be audited. ■