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Belgium
Tax Disputes

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Belgium.

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Belgium: Tax Disputes

1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

There is no specific tax registration procedure for individuals to be registered for personal income tax purposes In Belgium. Foreigners immigrating to Belgium should however register in their Belgian municipality of migration under civil law. As a result of this registration with the municipality, the local tax inspector will be informed of such registration and the individual will in principle be considered a Belgian tax resident (subject to exceptions).

Belgian companies should not register with the Belgian tax authority for corporate income tax purposes. The company should upon incorporation obtain an enterprise number via the Crossroads Bank for Enterprises. The Ministry of Finance will then generate the corporate taxpayer's tax file.

For VAT purposes, an individual or a Belgian company that envisages to supply goods or services as meant by the VAT Code, should submit a form “604A” in view of registering a VAT activity. The same rules essentially apply to foreign companies establishing a permanent establishment in Belgium.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

As to income taxes, the tax authorities will in principle issue a tax assessment based on the income tax return as filed by the taxpayer. Said tax assessment is typically issued at the latest on 30 June of the year following the relevant assessment year (e.g., for assessment year 2024, at the latest on 30 June 2025). Any tax due must be paid within two months following the tax assessment notice. The tax authority can verify the income tax declaration before or after having issued the tax assessment based on the income tax declaration. Indeed, the tax authority can carry out a tax audit and can rectify the tax declaration provided by the taxpayer after having issued a tax rectification letter followed by a(n) (additional) tax assessment provided that the tax rectification and subsequent tax assessment complies with the relevant investigation and assessment periods (see Q6).

Other taxes such as VAT, withholding tax and registration duties are payable based on self-assessment, whereby the taxpayer or debtor of the tax must determine, declare and pay the tax due within the relevant time frame.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Once introduced, a taxpayer can in principle rectify once the income tax return prior to the deadline for submitting the tax return. In other cases, one should request the competent tax office to take the modifications into account when issuing the tax assessment. In case of a material error (e.g., calculation mistake, error when transferring an amount etc.), double taxation or new information that could only be submitted after the deadline due to “force majeure", the tax authority can rectify the situation upon simple request (e.g., by phone or email) within five years as from 1 January of the assessment year (e.g., for assessment year 2024, until 31 December 2028).

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

The tax authority can challenge the tax declared and/or paid following a tax audit, which can take various forms; e.g., a(n) (un)announced visit of the taxpayer's professional – or, in some cases, private – premises or with a (written or oral) or request for information to which the taxpayer must respond in due time. In case of a timely response, the tax inspector can ask additional questions or end the audit without adjustment or with the intention to rectify the taxable income provided in the income tax return (if any). In the latter case, it should send a rectification notice justifying why it will issue a tax assessment not in accordance with the income tax return. The taxpayer then has 30 days to express its

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(dis)agreement. Absent timely answer to a request for information, however, the tax authority can proceed with the tax assessment based on the elements at its disposal (the so-called "ex officio" tax assessment).

5. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

The ordinary tax investigation and assessment period is 3 years as from 1 January of the relevant assessment year; e.g., for assessment year 2024 (calendar year 2023) , the taxable basis may be adjusted until 31 December 2026. As from assessment year 2023, the tax investigation and assessment periods were extended from 3 to 4 years in case of late or non-filing, from 3 to 6 years in case of certain cross-border elements being present and from 7 to 10 years in case of fraud.

Other investigation periods may apply to (professional) withholding tax.

6. How is tax fraud defined in your law?

Tax fraud entails the violation of tax legislation with fraudulent intent or with the intention of causing damage. Hence, a material (violation of tax legislation) and a moral (intentional) element must be present. A distinction is sometimes made, e.g., in view of possible sanctions, between "ordinary" and "serious" tax fraud whereby the following criteria could be used to assess the seriousness of the violation: the organisational nature of the violation, serious indications of corruption or of links with a terrorist group or criminal organisation etc.

7. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

Tax fraud is a criminal offence. Hence, criminal sanctions such as imprisonment and/or fines can be imposed by the criminal court depending on the gravity of the criminal offence. The tax authority can also impose administrative sanctions (see Q28). Administrative sanctions could in certain situations be considered as having a punitive nature so that under the "non bis in idem" principle they cannot be imposed in case a criminal sanction already applies. *In view of said "non bis in idem" principle,* the tax authority must inform the Public Prosecutor once a tax investigation reveals evidence of *serious* tax fraud (see Q 7). The Public Prosecutor can then consult with the competent tax officials and decide whether or not to pursue criminal charges.

In case of tax fraud, the ordinary investigation and assessment periods can be extended from 3 to 10 years.

8. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

There are no rules that determine how and when a taxpayer should be audited; this is at the tax authority's discretion. In practice, taxpayers are audited depending on priorities set by the tax authority and increasingly based on data mining (i.e., cross-checking of databases that highlight inconsistencies or indicators of non-compliance with tax obligations). The tax authority may commence an audit without prior justification. If the tax authority however intends to apply the 10-year investigation period, it must first notify the taxpayer of pre-existing indications of tax fraud.

9. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

The tax authority's investigative competences are in principle limited by the relevant legislation. In addition, the tax authority must comply with principles of good governance, including e.g., the principle of fair play. Hence, "fishing expeditions" are prohibited. Non-compliance with said rules and principles may result in the annulment of a tax (assessment). Finally, the tax authority is subject to deontological rules the violation of which would however not trigger the cancellation of a tax. The tax authority does not publish information on how it carries out audits.

10. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

For income tax purposes, the tax authority can request taxpayers to provide books and documents necessary to determine the taxable income (e.g., accounts, invoices, etc.). If the taxpayer uses a computer system or other electronic devices to keep books and documents, said request can extend to the analysis, programming and

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operating files of the relevant system, as well as the information carriers and all the data stored therein. Hence, the obligation to disclose books and documents could apply to all types of information (including emails), subject to exceptions (e.g., attorney-client privilege). For VAT purposes, the tax authority may request taxpayers to provide books, invoices, copies of invoices and other documents or copies thereof to be retained under VAT regulations or – more broadly – relating to the taxpayer's activity (including emails), subject to exceptions. In case of non-compliance, the tax authority can impose administrative fines and issue the tax assessment based on elements at its disposal (income tax) or issue a special report (procès-verbal) and rectification notice (VAT). In case of an (alleged) unlawful request, the taxpayer could appeal to the tribunal without completing the ordinary administrative phase, albeit some courts may disagree.

11. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

The tax authority can request information on a taxpayer from a third-party, subject to exceptions and limitations (e.g., professional or banking secrecy). Non-compliance can result in administrative fines. In case of an (alleged) unlawful request, one could appeal to the tribunal and this (for the taxpayer) without completing the ordinary administrative phase, albeit some courts may disagree.

12. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

As tax law is of "public order", neither the tax authority nor the courts and tribunals can relieve a taxpayer of its tax liability under the relevant legislation. Hence, the tax authority and the taxpayer cannot settle a dispute by agreeing to the (non-)application of the law or the taxes due under said law. That said, the tax authority and the taxpayer can however agree on mere questions of fact as a result of which an audit can be settled, and a litigation avoided.

13. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

The tax authority must take into account the relevant tax investigation and assessment deadlines and respect the principles of good governance (see Q4-6-10). The non-compliance with said rules and principles can lead to the annulment of a tax (assessment).

14. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

Yes, a taxpayer can appeal to the competent tax office within 1 year as from the third working day following the tax assessment notice. A judicial appeal can in principle only be filed following a prior administrative appeal. The taxpayer can initiate judicial proceedings in case of (i) a negative decision by the competent tax office, or (ii) the absence of a decision by the competent tax office within the legally foreseen period of, in principle, 6 (sometimes 9) months..

15. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

See Q15.

16. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

There is no public hearing during the administrative phase. The decision of the competent tax office is not published and hence not accessible to third parties. As to the judicial phase, court hearings are in principle held in public. Judicial decisions are however not systematically published although an anonymised decision can be requested. Important decisions are often published in tax journals.

17. Is the procedure mainly written or a combination of written and oral?

Mainly written although (i) the taxpayer can request a hearing during the administrative phase, and (ii) oral pleadings take place as part of the judicial proceedings.

18. Is there a document discovery process?

There is no document discovery process like in Anglo-Saxon jurisdictions. That said, taxpayers can consult and receive copies of their own administrative file (subject to exceptions).

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19. Are witnesses called to give evidence?

During the administrative and judicial phase, the tax authority and taxpayer may in principle rely on all evidentiary means permitted under civil law, including testimonies subject to specific rules for the tax authority during the administrative phase. A judge will independently consider the probative value of witness evidence. In practice, witness evidence does not (yet) play a significant role in tax matters.

20. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

A timely and correctly filed income tax return is presumed to be correct. The tax authority bears the burden of proof to consider otherwise; however, the tax authority can still request the taxpayer to provide sufficient documentation to justify an element of the income tax return. For example, the tax authority can request the taxpayer to provide sufficient documentation to justify the deduction of professional expenses. That said, the burden of proof of the correct taxable income shifts to the taxpayer following an “ex officio” assessment by the tax authority (see Q5).

21. How long does an appeal usually take to conclude?

This depends on the facts of each case. An administrative appeal usually takes about six to nine months, after which the taxpayer could submit his case to the tribunal of first instance (in case of a negative administrative decision or in the absence of a timely decision). Mediation could extend the administrative procedure. The duration of a judicial proceeding depends on (i) the complexity of the case, and (ii) the tribunal or court. Generally, a period of 1-2 years should be considered for each judicial phase. Please note that the Brussels tribunals and courts have a significant backlog as a result of which it could take years before a decision is rendered. Finally, the time and order of handling cases by the Supreme Court (Cour de Cassation) is up to the discretion by the Court (in practice, generally 18 months). The Constitutional Court (Cour Constitutionnelle) can render a decision within 1 year.

22. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

No, the administrative and judicial appeals in principle suspend the recovery of the disputed tax as a result of which the taxpayer is not required to pay. That said, if the taxpayer were to decide to not immediately pay the disputed tax, late payment interest (4% income tax; 8% VAT) per year will in principle be due in case a judge ultimately upholds the tax. However, if the taxpayer were to already pay the dispute tax, an annual interest (2%) will in principle be due by the Treasury in case a judge nullifies the tax. Finally, the tax authority can take conservatory measures to ensure the recovery of the disputed tax.

23. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

Tax advisors can act of behalf of the taxpayer during the administrative procedure provided they have a special power of attorney. This applies, strictly speaking, also for lawyers although in practice lawyers often act without such power of attorney. During judicial proceedings, only lawyers can represent the taxpayer. A lawyer does not require a special power of attorney for procedural acts. A special power of attorney is however needed to accept the negative outcome of a judgement (acquiescence). A limited number of lawyers are allowed to plead cases before the Supreme Court.

24. Is there a system where the “loser pays” the winner's legal/professional costs of an appeal?

In case of a successful administrative appeal, the tax authority does not need to reimburse the taxpayer's legal or other professional costs. As to judicial proceedings, the judge generally condemns the “losing” party to pay the procedural costs; e.g., bailiff's costs or a lump sum amount to cover legal fees (for the taxpayer only when the tax authority relied on outside legal counsel).

25. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

A taxpayer can request non-binding mediation at any time during the administrative phase. The relevant service is the so-called Tax Conciliation Service. Mediation is technically still possible before courts but seldomly used in practice. That said, parties can in principle still settle their dispute in a settlement agreement (subject to exceptions). As to international tax

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disputes, few alternative dispute resolutions are available: (i) the mutual agreement procedure (MAP) under a tax treaty or in the framework of the EU Dispute Resolution Directive (EU 2017/1852) in case of an incorrect treaty interpretation or application, which could result in binding arbitration, and (ii) the EU Arbitration Convention on Transfer Pricing with respect to specific transfer pricing disputes.

26. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

Following the administrative procedure, the taxpayer can appeal to the tribunal of first instance (income tax) which will decide on the merits of the case. In VAT matters, the law does not provide a specific administrative appeal procedure – although in practice taxpayers are permitted to introduce an administrative appeal – so the taxpayer could appeal the contested tax directly to the tribunal. The "losing" party can appeal the tribunal's decision to the court of appeal which will re-examine the entire case. The decision rendered by the court of appeal may be challenged before the Supreme Court which will not revisit the case but examine whether the court of appeal has complied with the relevant legal rules and principles. Finally, the "losing" party can appeal the Supreme Court decision to the European Court of Human Rights. Please note that Belgian tribunals and courts can ask preliminary questions to the Constitutional Court or the Court of Justice of the European Union.

27. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

The main administrative tax penalties are tax increases and administrative fines. As to income tax, the tax authority can apply (i) a tax increase ranging from 10% to 200%, and (ii) an administrative fine ranging from €50 to €1,250. Other fines apply to specific (reporting) violations. As to VAT, the tax authority can apply (i) a fine up to 200% of the unpaid tax, and (ii) a fine ranging from €50 to € 5,000. Criminal sanctions (e.g., imprisonment or monetary fines) could apply in case of tax fraud.

28. If penalties can be mitigated, what factors are taken into account?

Mitigation factors are essentially (i) the type (and gravity) of the violation, (ii) the recurrent nature of the violation, (iii) the presence of fraudulent intent or the intention to cause damages, and (iv) "matters of principle" (income tax). Finally, a "mercy" request for "fairness" reasons can be submitted.

29. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

The tax authority annually announces priorities for future tax audits (see Q10) such as, for example for assessment year 2023, income from copyright income, foreign property owners and foreign bank accounts. In addition, the tax authority often brings challenges in the following areas: transfer pricing, substance of holding companies, (R&D) professional withholding tax exemptions, permanent establishment presence (e.g., due to increased cross-border mobility of workers), deductibility of professional expenses, fringe benefits, costs proper to the employer, exempt capital gains on shares for individuals (e.g., in a private equity context), payments to tax havens, tax incentives for films ("tax shelter"), the presence of a "fixed establishment" (VAT), and the application of specific VAT regimes in relation to real estate.

30. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

Yes, we believe there are elements that render challenges with the tax authority more difficult for taxpayers. First, as a general comment, the increased complexity of Belgian tax rules as a result of the multi-layered legal order encompassing Belgian (regional and federal level), EU and international initiatives has led to new interpretation questions and disputes with the tax authority that (still) need to be settled by (the highest) courts. Second, the tax authority during audits has recently ignored preliminary tax rulings rendered by the Belgian Ruling Commission which undermines legal certainty for taxpayers. Third, the tax authority has challenged transfer pricing studies and valorisation reports made by experts on behalf of the taxpayer based on own economic studies and data. Finally, the backlog in certain courts – such as the Brussels court of appeal where it may take more than 10 years for a decision is rendered – may disincentivize taxpayers to appeal challenges by the tax authority.

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31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

See Q30. In addition, recent and upcoming legislative and regulatory initiatives at the Belgian (e.g., the regime for incoming taxpayers and researchers), European (e.g. directives on anti-tax avoidance, minimum tax for MNEs, shell companies, notional interest deduction, "green taxation" etc.) and international/OECD (e.g., BEPS, Pillar Two, Transfer Pricing) level as well as developments in EU case law (e.g. the "Danish cases" of 26 February 2019 on "beneficial ownership" and tax abuse) will in our view increase controversies and disputes with the Belgian tax authority in the next couple of months and years.

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