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## At a glance: tax law enforcement in Belgium

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### **Enforcement**

*Compliance with tax laws*

**How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?**

The relevant legislation is codified in the Income Tax Code (special codes exist for inheritance taxes, registration duties and VAT), which establishes the rules governing the determination of taxes and the procedure for the assessment of taxes.

The Flemish Region has its own tax code, covering all taxes.

The general principles applicable in Belgian tax law flow from the Belgian Constitution and from the law in general.

Tax law must comply with:

- the Belgian Constitution;
- international treaties; and
- European legislation.

According to the legality principle (article 170 of the Constitution), no tax for the benefit of the state may be waived except by way of a law.

Royal decrees supplement the Income Tax Code and the Belgian tax authorities publish guidelines, but for information purposes only.

A dedicated service of the Belgian tax authorities (the SDA) can issue formal rulings on the assessment of a given situation. These advanced rulings are binding.

*Types of taxpayer*

**Are different types of taxpayers subject to different reporting requirements? Can they be subjected to different types of review?**

The Finance Federal Public Service (Finance FPS) forms part of the Ministry of Finance and falls under the responsibility of the Minister of Finance.

The Finance FPS is divided into different general authorities:

- General Administration of Taxes;
- Tax and Tax Collection;
- Special Tax Inspectorate;
- Customs and Excise;
- Patrimonial documentation; and
- Treasury.

The general administration is geographically organised.

The SDA (the ruling commission) is an autonomous department of the Finance FPS, where taxpayers can secure a ruling in advance. The SDA will give a written opinion on the tax effect of a contemplated transaction and will stick to the opinion provided that the relevant facts have been fairly presented.

Within the Finance FPS, there are centres specially dedicated to large companies. These fall into two categories:

- The seven ‘big business’ centres. These deal with all aspects of taxation. It is no longer the type of tax (VAT or corporation tax) that determines the organisation of services, it is the company itself that is the starting point of these centres.
- The Large Companies Management and Specialised Controls Centre. Within this, the sector coordination division acts as a single point of contact for large companies and the management division is, among other things, responsible for the processing of returns and for the control and the treatment of litigation in five specific fields:
  - the sector of specific activities;
  - transfer pricing;
  - VAT units;
  - tax shelter; and
  - various taxes.

#### *Requesting information*

**What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer’s employees? If so, are there any restrictions?**

On request by the tax authorities, the taxpayer must provide all books and documents needed to determine the amount of taxable income. For corporate taxpayers, this obligation extends to the registers of the shareholders and bondholders and to the attendance list of the general shareholders meetings. The information so received may also be used in order to tax third persons.

The tax authorities, if holding a mandate, have the right to access without prior notice the taxpayer’s professional premises at any time of the day.

Access to the inhabited private premises can only occur between 5 am and 9 pm and requires the prior authorisation of a Police Judge.

The Constitutional Court ruled that article 319 (2) of the CIR 92 and article 63 (3) of the VAT Code – interpreted as meaning that the police judge need not give reasons for his or her authorisation – actually violate the Constitution. and the European Convention on Human Rights. An authorisation must be well motivated. If it is not, there is no control possible by the judge of the regularity of the visit of the places by the tax and the evidence obtained, according to the Constitutional Court.

The authorisation to visit ‘must indicate in what instruction, for which domicile and to whom it is issued, as well as the reasons justifying its necessity, even in a concise manner’ (see point B.9.6 of the judgment in question, paragraph two).

It may be accepted that the police judge shall justify the authorisation of the visits by referring to the indications appearing in the application for authorisation or in the attachments and by repeating these indications. These particulars and documents must, however, in this case be subject to contradiction on the occasion of the judicial review of the regularity of the tax visit carried out by the Court of First Instance (judgment of the Constitutional Court No. 104/2019 of 27.06.2019)

In order to assess taxes due by a taxpayer, the tax authorities may request written testament from third parties; they may also request from a third party any information considered to be essential for the establishment and the collection of the tax due. They may proceed to investigations involving third parties and to hearings of third parties, including employees.

In a recent decision, the Constitutional Court ruled on the topic of dawn raids carried out by the tax authorities, following a preliminary referral. The Constitutional Court was asked whether the tax authorities’ broad interpretation with regard to dawn raids could be reconciled with the right to privacy and the ‘inviolability of the home’, as protected by articles 15 and 22 of the Belgian Constitution and article 8 of the European Convention on Human Rights.

The Constitutional Court ultimately decided that the relevant legal provisions do not violate the right to privacy and the inviolability of the home. It did, however, set out some boundaries, making it clear that the tax authorities do not have an unconditional and unlimited right to access and search the professional premises of a taxpayer. The court recalls that the right to privacy and the inviolability of the home are fundamental rights that apply to both individuals and legal entities.

Furthermore, the Constitutional Court accepts that a dawn raid constitutes an interference with these rights. Such interferences are only allowed when they have a sufficiently clear legal basis, respond to a pressing social need and are proportionate to the aim pursued.

#### *Available agency action*

### **What actions may the agencies take if the taxpayer does not provide the required information?**

If the taxpayer does not provide the requested information, the tax authorities may use the ex-officio assessment, which implies the burden of proof being shifted from the tax authorities to the taxpayer.

Penalties can be imposed; criminal sanctions can also apply in the event of an opposition to a tax audit.

#### *Collecting overdue payments*

### **How may the tax authority collect overdue tax payments following a tax review?**

The general administration of tax collection and recovery may take precautionary or enforcement measures, or both, on the taxpayer's assets (they can serve garnishee, seize estate, undertake a simplified seizure on the attachable portion of wages) to ensure the recovery of the tax.

#### *Penalties*

### **In what circumstances may the tax authority impose penalties?**

As concerns income taxes, where no declaration of income has been submitted at all, or an incomplete or wrong declaration has been filed, within any of the different procedures for levying income taxes, the taxes due can be raised with an incremental penalty from 10 per cent up to 200 per cent, according to a determined scale.

Besides proportional increases, tax law also provides for flat penalties.

The Income Tax Code leaves the administration the option to sanction 'each violation of the provisions of the Income Tax Code as well as its executory decrees' with a fine from €50 up to €1,250.

The essential purpose of the flat penalties is to ensure cooperation of taxpayers and third parties within the tax procedures, under the risk of an additional penalty, in cases where a proportional penalty cannot be asked or would be too low.

Special penalties apply with respect to specific reporting duties.

### **How are penalties calculated?**

With regard to income taxes, the taxes due can be raised with an incremental penalty from 10 per cent up to 200 per cent, according to previously determined scales.

These scales make a difference according to whether the mistake in the tax return was outside the taxpayer's competence (no tax increase); whether the mistake was in good faith (subsequently 10 per cent, 20 per cent and 30 per cent, and the fourth time it is considered to be intentional); whether the mistake was done intentionally to avoid taxes due (subsequently 50 per cent, 100 per cent and 200 per cent); or whether the taxpayer made use of fraudulent documents (automatically 200 per cent).

The increase will only be applied when the non-declared income reaches at least €2,500, while the administrative penalty combined with the regular taxes due can never exceed the non-declared taxable income.

Besides this legal correction, the tax authorities still can correct the percentages in view of the concrete circumstances (in cases where the taxpayer is cooperative for instance).

Besides proportional increases, tax law also provides for a flat penalty for each violation of the provisions of the Income Tax Code.

As for the proportional penalties, these fines also progressively increase from €50 up to €1,250, according to determined scales depending on the repetition of the facts and the faith of the taxpayer.

Special penalties apply, ranging from €1,250 to 25,000 for non-compliance (late, incomplete, or no filing) with the new transfer pricing documentation requirements.

A penalty of €6,250 is imposed on a taxpayer for not reporting a foreign entity or a trust (€6,250 per year and per undeclared entity or trust).

### **What defences are available if penalties are imposed?**

Taxpayers may ask the Finance FPS for a reduction in the penalties provided that some conditions are met (good faith in particular).

Any director's administrative decision may also be challenged (and therefore claims on surcharges and penalties in connection herewith) by the taxpayer by lodging a legal action to the court of first instance.

Taxpayers may request cancellation of penalties where the statement of reasons by the tax authorities is insufficient or if the penalties are disproportionate.

#### *Criminal consequences*

### **Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?**

Belgian criminal law is regulated in separate codes, which describe the general criminal law procedure, as well as different offences and provide for sanctions. They can also be applied in a particular tax context. As such, capital benefits coming from tax offences can be confiscated profit from money laundering and handling of stolen goods is also sanctioned in a tax context.

'Tax fraud' is the basic criminal offence, sanctioned with imprisonment from eight days up to two years and a fine ranging from €250 to €500,000 or one of both sanctions. Tax fraud means each conscious contravention of the regulations provided for in the Income Tax Code as well as its implementing orders and can consist of acting, as well as failing to act.

An aggravated offence is provided in the Income Tax Code called 'Serious tax fraud whether organised or not'.

The fines can be subject to the additional surplus charge and criminal fines for tax offences can add up to €3 million.

Both individuals and legal entities can be subject to criminal proceedings.

#### *Enforcement record*

### **What is the recent enforcement record of the authorities?**

The number of enforcement and precautionary measures taken in 2018 was 455,242 (compared with 582,606 in 2017 and 617,816 in 2016).

In 2018, the rate for the recovery of tax debts was of 68.75 per cent.

A total of 2,148 courts proceedings were initiated in 2018 (compared with 1,876 in 2017).

According to the enforcement survey of 2018, reassessed taxes and associated penalties were estimated by the Special Tax Inspectorate to be €1.009 million (compared with €2.125 million in 2017).

### **Law stated date**

#### *Correct on*

### **Give the date on which the information above is accurate.**

15 September 2020.

**Afschrift** - Pascale Hautfenne and Thierry Afschrift

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