

# Tax Newsletter

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## **How does Belgium tax your Dutch-source business income?**

- A natural person subject to Belgian personal tax has to report his worldwide income in Belgium. However, if that person works abroad there is a real risk that the source country also taxes this business income.
- In order to mitigate double taxation, Belgian tax law is featured by the exemption with progression reserve if the income is derived from a country with which Belgium has concluded a tax treaty. In essence, this is a prorate rule: the higher the foreign-source income compared to worldwide income, the lower the Belgian personal tax cost.
- Be careful: even though the Dutch-source income is eligible for double taxation relief in Belgium, it is still subject to Belgian local taxes.
- The condition to be satisfied is that the business income is 'taxable / taxed' in accordance with the definition laid down in the applicable tax treaty.
- Pursuant to the current tax treaty concluded between Belgium and The Netherlands in 2001, the income should be 'taxed' in The Netherlands. This is the case if the income is actually included in the taxable basis for Dutch tax purposes (circular nr. AFZ/2004/0313 (AFZ 8/2004) dated 28.04.2004).
- However, the Belgian Supreme Court has already confirmed that no 'effective taxation' is required (Cass., 25.01.2018 in case of a sportsman and 06.09.2024 in case of a pension). This is the so-called *exemption vaut impôt* – principle.
- On 21.03.2023, also the Antwerp Court of Appeal adopted the same interpretation in the particular context of the Seat Agreement concluded between Belgium and The Netherlands. According to this Agreement, individuals working in The Netherlands for specific instances are treated as 'diplomatic civil servants'. As a result, they benefit from an attractive Dutch tax regime.
- Assume that you work in The Netherlands where you have duly declared your Dutch-source business income. Unfortunately, you forget to report it in your Belgian personal tax return. If so, the Belgian tax authorities can add a lump-sum Dutch business income to your taxable basis. However, this should not prevent you from claiming double tax relief in Belgium (Antwerp Court of Appeal, 01.04.2025).
- The Belgian Finance Minister now adheres to this Belgian case law. In other words, 'theoretical taxation' in The Netherlands is sufficient (*Questions & Answers*, Chamber, 2024-25, nr. 56-.002, 202).
- However, when the new Belgian – Dutch tax treaty will enter into force, 'effective taxation' in The Netherlands will be required to be able to enjoy double taxation relief in Belgium.