

Tax Newsletter



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How does Minister Jambon himself interpret the capital gains tax?

On 27 January 2026, Minister of Finance Jambon shared the following insights regarding the announced general capital gains tax ("CGT") in personal income tax:

- A 2026 payment under an earn-out arrangement concluded before 2026 falls outside the scope of the CGT.
- 'Investment gold' in accordance with the EU VAT Directive (and thus not silver or jewelry) falls within the targeted 'financial assets'.
- It is expected that foreign (including non-EU) tax administrations will provide useful information on crypto-assets in the application of the DAC 8 Directive.
- The bare owner, and not the usufructuary, is subject to the CGT. A person holding 10% of shares in full ownership and 13% in bare ownership therefore has a substantial shareholding ("SSH") and benefits from the EUR 1.000.000 (instead of EUR 10.000) exemption threshold.
- A SSH requires a participation of at least 20% on the date the capital gain is realized. However, an SSH can only relate to shares and not to profit certificates, as the latter do not represent capital.
- 'Internal capital gains' are deemed to be 'abnormal' and are therefore taxed at 33% personal income tax plus municipal surcharges, without any exemption threshold. Such a gain results from a transfer, other than by contribution in kind, by a natural person and his close family of the shares of a company over which he exercises control to a company over which he and his family also exercise control. Conversely, when the shares are transferred to a company controlled jointly by the taxpayer and a third party (e.g. a private equity party or in an MBO), no 'internal capital gain' arises.
- If parents sell the shares of a family company to the children's holding company, this likewise does not result in an 'internal capital gain'.
- A contribution to the matrimonial community is not a transaction for consideration and therefore no CGT is due. In the event of divorce, there is an explicit CGT exemption.
- A contribution to a civil partnership (*maatschap*) is a transfer for consideration and CGT may therefore be due. After all, the assets of the civil partnership differ from those of the partners, even though the partnership is fiscally transparent. Legal scholars have reacted critically.
- The 'acquisition of own shares' falls within the scope of the CGT, except where a taxable 'dividend' arises in the same financial year (Circular 2017/C/12).
- A person subscribing to a bond below par and receiving the full issue price at maturity realizes a taxable capital gain. However, this is not a transaction for consideration and the difference may qualify as 'interest'; how then can CGT be due?
- A taxpayer who deliberately remains annually below the exemption thresholds of EUR

1.000.000 or EUR 10.000 does not commit tax abuse.

- The CGT also applies upon emigration. There is an automatic deferral of payment for those moving within the EEA or to a country that has concluded a double tax treaty with Belgium providing for exchange of information and assistance in recovery, provided they remain there for two years. Dubai and Monaco do not qualify. Consequently, there is no immediate collection of the CGT only if a guarantee is provided for two years.
- The minister refers to the Baltus doctrine in light of 'abnormal transactions'. Does this mean that only the 'abnormal' fraction of the capital gain is taxable at 33% personal income tax?
- Following consultation with the banking sector, the CGT will be collected via withholding tax at the earliest from 1 June 2026, unless the taxpayer prefers an opt-out scenario.