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## **“Business for rent”; also to your own company?**

Can a natural person lease out his business (including its customer base) to his own company (“BelCo”)? What did the Antwerp Court of Appeal decide on 03.03.2026?

- The leasing and granting of rights to movable assets generate movable income, taxable at 30% personal income tax. Thanks to a 15% lump-sum expense deduction, the effective personal income tax burden amounts to 25.5%, while the rent is tax-deductible for BelCo.
- In the past, the Belgian Court of Cassation ruled that, under civil law, an entrepreneur cannot lease out a customer base separately from the related agreements and arrangements (Cass. 16.06.2023). After all, the tenant is entitled to the peaceful enjoyment of the leased property.
- The Antwerp Court, however, confirmed that a business undertaking (*fonds de commerce*) is an intangible movable asset that can be leased under the Belgian Commercial Lease Act. A business undertaking consists of all tangible and intangible elements necessary to ensure the continuity of the business and to preserve its customer base and market position. Together, these elements constitute the commercial value of an enterprise.
- These various components should therefore be clearly identified in the lease agreement, for example: specific know-how providing a competitive advantage, customer relationships, inventory, supplier contracts, employees whose rights and obligations are transferred pursuant to Collective Bargaining Agreement No. 32bis, trademarks and logos, the website, store fittings and fixtures, etc. This ensures the tenant’s peaceful enjoyment of the business undertaking.
- The rent was determined based on the market value of the business undertaking, and the lessor agreed to a non-compete clause. BelCo had been incorporated for family-related reasons, and after the lease arrangement, the business was operated in a different manner.
- Consequently, the Court found no sham transaction in the leasing of the business undertaking. The tax authorities had argued otherwise and sought to reclassify the rent as Director’s remuneration, since the lessor was also a Director of BelCo. However, the Court held that the rent could not be characterized as Director’s remuneration because it did not compensate any professional services or managerial activities.