

Tax Newsletter

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When is your income 'taxed abroad' and therefore exempt in Belgium?

- When a natural person living in Belgium earns qualifying income from a country with which Belgium has a double taxation treaty, he benefits in Belgium from the exemption with progression reserve. This is the so-called 'rule of three': the higher the foreign income relative to global income, the lower the personal income tax in Belgium.
- When a Belgian company earns profits through a permanent establishment in a treaty country or earns income from real estate located in a treaty country, these are exempt from corporate tax in Belgium.
- The condition is that this income successfully meets the so-called taxation condition of the applicable double taxation treaty. What exactly does this mean? In Circular AFZ 4/2010 of 06.04.2010, we find useful clarification.
- In some double taxation treaties (e.g. Belgium - Germany), it is stated that the taxation condition is already fulfilled if the income is 'taxable' in the source country. So it is sufficient that the treaty grants taxing rights to the source country, even if it doesn't make use of them and therefore the income is not taxed.
- Other double taxation treaties (e.g. Belgium – US, Belgium – UK, and Belgium – UAE) state that the income must be 'taxed' in the source country. This is the case if it is actually included in the tax base and thus at least 'theoretically taxed'. However, 'actual taxation' is not required. This is the "*exemption vaut impôt*" principle.
- Finally, there are treaties that require 'effective taxation' in the source country, e.g. Belgium – Hong Kong and the new Belgium – France treaty.
- On 21.03.2023, the Court of Appeal of Antwerp delivered a ruling in the special context of the Seat Agreement between Belgium and the Netherlands: based on this, residents of Belgium who work in certain agencies in the Netherlands are considered 'diplomatic officials' and are therefore also lightly taxed. However, that was sufficient to be able to claim the exemption with progression reserve in Belgium.
- The burden of proof regarding 'taxation abroad' lies with the taxpayer