

Family Owned Business & Private Wealth

Benelux & Swiss developments for family-owned businesses Summer Edition 2024

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The summer of 2024 is almost over! We look back at what 2024 has brought and look ahead at what the coming months will bring for Belgian, Dutch, Luxembourgish and Swiss family-owned businesses from a tax and legal perspective.

This 'Summer Edition 2024' provides you with information on various themes for each home market to give some thought.

Our dedicated advisors in [the 'Family Owned Business & Private Wealth' team](#) focus on a daily basis on the needs of (international) family-owned businesses in our four home markets Belgium, the Netherlands, Luxembourg and Switzerland.

Trends and developments

Family-owned businesses and their shareholders face many developments that may impact them on the tax or legal front. National, international and European social, economic and legal developments rapidly succeed one another. In the area of law and tax topics such as preventing abusive, fair share tax contributions, climate adaptation and transparency are on the agenda. In recent years, the taxation of the (Ultra) High Net Worth Individuals ((U)HNWIs) has attracted increasing attention. In many countries, education, healthcare and infrastructure are require further or increasing investments. Additional tax revenue is often needed for that. In addition, wealth inequality has increased worldwide. Support for additional taxation of (U)HNWI's is increasing as well.

Blueprint for an internationally coordinated minimum tax for UHNWIs

Recently, the EU Tax Observatory presented a blueprint for an internationally coordinated minimum tax on UHNWIs. The blueprint was commissioned by the Brazilian presidency of the G20 ahead of a summit in July 2024. The blueprint includes a baseline proposal that individuals with more than \$1 billion in wealth would be required to pay a minimum amount of tax annually, equal to 2% of their wealth. In the blueprint, it is noted that the minimum tax could be extended to centimillionaires, and consideration is given to start the minimum tax at USD 100 million in wealth.

Following the summit, the G20 issued a declaration in which they commit to engage cooperatively to ensure that UHNWIs are effectively taxed, while fully respecting tax sovereignty. Cooperation could involve exchanging best practices, encouraging debates around tax principles, and devising anti-avoidance mechanisms, including addressing potentially harmful tax practices.

Tax regimes for (U)HNWI's under pressure

The sentiment that resulted in the blueprint for a global UHNWI minimum tax is also affecting tax regimes for this group across Europe. For example, the United Kingdom (UK) recently announced major tax reforms in their Spring 2024 Budget. The proposed changes are relevant for natural persons living in the UK but not domiciled there (so-called “non-doms” or RNDs). The current “remittance basis” of taxation, whereby only UK tax is payable on non-UK income and profits when transferred to the UK, would be abolished. From April 6, 2025, a new regime for foreign income and profits with a term of four years would be introduced. The proposed reforms would also impact inheritance taxes and trusts.

In addition, on August 7, 2024, the Italian Council of Ministers approved a decree increasing the flat-rate tax on income (flat tax) earned abroad by natural persons who move their tax residence to Italy from 100,000 euros to 200,000 per year. It should be noted that this doubling of tax only applies to future Italian residents. Taxpayers who already benefit from the HNWI regime and benefit from a flat tax amounting to 100,000 euros can continue to do so (at least taking into account the maximum term of 15 years).

Similar trends are visible in other European countries. In the Netherlands, the government has for example gradually decreased the benefits of the Dutch expatriate regime (30%-regime) over the years.

Developments in Belgium, the Netherlands, Luxembourg, Switzerland

What has 2024 brought thus far and what will the coming months bring for Belgian, Dutch, Luxembourgish and Swiss family-owned businesses from a tax and legal perspective? We would like to share various themes with you to consider, if relevant in your situation.

Belgium

The Belgian Cayman tax has been further tightened as of 2024

The Cayman tax is a set of rules in the Belgian Income Tax Code to prevent Belgian tax residents from avoiding taxation by holding assets through foreign low-taxed legal entities and trusts (**legal structures**). Individual and corporate tax residents of Belgium are in scope of the Cayman tax, if they are a founder (and/or) beneficiary of a legal structure (**founder**). The Cayman tax rules have been tightened as of 2024. One of the changes is the broadening of reporting requirements of the legal structure in the personal income tax return of the founder: the value of the assets of the legal structure needs to be reported, together with the value of the assets contributed into the structure by the founder. This increased reporting requirements entered into force as from income year 2023 (assessment year 2024) which means that the reporting obligation already applies for personal income tax returns that need to be submitted by 16 October 2024. Additionally, an exit Cayman tax upon the emigration of the founder was introduced: undistributed profits of the legal structure are deemed to be distributed and are taxed at a flat rate of 30%.

According to the Belgian Ministry of Finance, a Dutch *stichting administratiekantoor* (**STAK**) qualifies as a legal structure and should be reported in the income tax return of the founder. However, the income from a STAK only falls under the look-through tax in case the depository receipts relate to a shareholding in a qualifying legal structure or if certain requirements are not met. These requirements regard the transparency of certificates issued against shares of Belgian companies if the income of the underlying shares is distributed directly and fully to the holder of the certificates. Consequently, the STAK that certifies shares in accordance with these requirements qualifies as a legal structure that must be reported, but its income is out of scope of the look-through tax. See for more information [our news article of 22 December 2023](#).

Adjustment in the wealth tax for non-profit organizations and foundations

Belgian non-profit organizations and foundations are subject to wealth tax. The tax is due annually on the market value of the assets as per January 1. In principle, debts or charges are not deductible (certain exceptions apply). As of 2024, the flat tax rate of 0.17% was changed to progressive tax rates and foreign real estate is no longer exempt. The following tax rates are applicable:

- no tax is due on the first bracket of EUR 50,000;
- 0.15% tax is due on the bracket from EUR 50,001 up to EUR 250,000;
- 0.30% tax is due on the bracket from EUR 250,001 up to EUR 500,000;
- 0.45% tax is due on the value of the assets as from EUR 500,001.

Agreement between Belgium and the Netherlands – Is the home workplace a permanent establishment?

Belgium and the Netherlands have signed an agreement on 23 November 2023 regarding the (non-)recognition of a home office Permanent Establishment (hereafter 'PE') within the meaning of article 5, §1 of the current double tax treaty in case of cross-border teleworking. The double tax treaty between Belgium and the Netherlands defines "material PE" as a fixed place of business where an enterprise's business is carried out.

The agreement outlines the definitions of teleworking arrangements, including incidental teleworking, structural teleworking and home working activities.

As a practical application, a PE is presumed to be absent:

- if an employee, who is a resident of one jurisdiction, works 50% or less of his working hours from home for an employer based in the other jurisdiction within a 12-month period;
- if an employee, who is a resident of one jurisdiction, works from home for an employer based in the other jurisdiction and only performs activities of a preparatory or auxiliary nature, even if the home office would constitute a fixed place of business at the disposal of the employer. According to the agreement, an auxiliary activity could, depending on the circumstances, include secretarial and internal accounting, human resources (HR) or ICT support activities.

The agreement is limited to the (non)recognition of a material PE and does not provide guidance for other types of PEs that could arise. Belgian and Dutch employers should therefore in particular carefully monitor situations where employees habitually conclude and/or extensively negotiate contracts on behalf of the employer when working from home in the other jurisdiction (so-called "agency PE"). Do you want to know more? See [our news article of 18 December 2024](#).

Formation of a new government

Due to the formation of new federal and regional government in Belgium, (new) fiscal measures are likely to be introduced.

The Netherlands

Dutch business succession tax facilities to be amended from 2025

On 19 April 2024 the draft bill 'Amendments to the Business Succession Facilities 2025' was published in the Netherlands. The draft bill proposes five measures to adapt the Business Succession Facilities. The draft bill aims to enhance the effectiveness of the Business Succession Facilities and minimize unintended misuse. However, the draft bill seems to go much further, also potentially impacting legitimate business successions. This can threaten the continuity of family business. The definitive bill is expected to follow when the Dutch Tax Plan 2025 is presented on Budget Day 2024 (17 September 2024). See for more information [our news article of 22 April 2024](#) (Dutch only).

Dutch box 3 wealth tax still discriminatory

From 1 January 2017 the taxation in box 3 was adjusted and the notional return was calculated based on a notional/fictitious asset mix. This notional/fictitious asset mix did not consider the taxpayers' actual investment choices and their effective return.

On 24 December 2021, the Dutch Supreme Court ruled in its 'Christmas Judgement' that the taxation in box 3 since 1 January 2017 violated the right to property and the prohibition of discrimination under the European Convention on Human Rights (ECHR). In response to the Christmas ruling, the State Secretary of Finance initiated a recovery operation by offering taxpayers compensation for past taxation in box 3 via the Legal Redress Act (2017-2022) as well as ensuring future taxation by amending the box 3 taxation via the Bridging Act (from 2023). Taxation under both Acts is based on the so-called "flat-rate savings variant" and calculated the compensation by applying a flat-rate return on a taxpayer's box 3 assets. On 6 June 2024 the Dutch Supreme Court ruled that the Legal Redress Act and the Bridging Act still result in a violation of the right to property and prohibition of discrimination in cases where the deemed (flat-rate) return is higher than the actual return. The State Secretary of Finance is currently still studying the judgement and mapping out the consequences. See for more information [our news article of 6 June 2024](#).

New EU legislation for the identification and registration of UBO's (EU AML legislation)

On 30 May 2024, new European legislation with the aim to prevent money laundering and terrorist financing was adopted (the EU AML legislation). The new EU legislation changes the rules for the identification and registration of UBO's. A few of these changes are: (1) the broadening of the UBO-definition, (2) a separate UBO-definition in case of a foundation, (3) stringent rules for the exemption of listed companies and (4) limiting the access to the UBO-register to persons with a legitimate interest. The new EU legislation will also lead to changes in the Netherlands. As the new rules will come into effect in 2027, the impact of the new EU AML legislation will be clarified in the next few years. Do you want to know more? See [our news article from 17 June 2024](#).

The Dutch (open) Limited Partnership (CV) subject to change

As of 1 January 2025, legislation will come into force that will change the tax treatment of a non-transparent Dutch limited partnership ("Dutch open CV") and foreign legal forms that are comparable to a non-transparent Dutch limited partnership ("Dutch open CV"). Nowadays, a Dutch open CV is considered fiscally non-transparent being subject to Dutch corporate income tax or Dutch withholding taxes. With the new legislation a Dutch CV will always be treated as fiscally transparent and will no longer be subject to Dutch corporate income tax or Dutch withholding taxes. Instead, the partners of a CV will be directly liable for taxation on their participation in the CV. The shift from a fiscally non-transparent entity to a fiscally transparent entity has various tax consequences. To prevent direct taxation the legislation includes transitional provisions. These transitional provisions can only be invoked in 2024.

In addition, as of 1 January 2025 the classification rules for Dutch Mutual Funds (fonds voor gemene rekening, "Dutch FGR") are amended. Nowadays, a Dutch FGR can be classified as fiscally transparent or fiscally non-transparent. With the amendment of the classification rules a Dutch FGR can only be classified as fiscally non-transparent when the Dutch FGR qualifies as "fund" under the Dutch Financial Supervision Act ("Wet op het financieel toezicht"). To prevent direct taxation the legislation includes transitional provisions. These transitional provisions can only be invoked in 2024.

Restriction of the gift deduction

On 16 May 2024, the new Dutch coalition partners concluded the coalition agreement for the years 2024-2028 entitled 'Hope, courage and pride'. The coalition agreement includes, among others, agreements on financial topics regarding the Dutch national budget. The budgetary appendix provides insight into various proposed Dutch tax measures. One of the proposed measures is the restriction of the deduction for gifts in the Dutch personal income tax and the Dutch corporate income tax. The possibility of doing gifts by a corporation will also be restricted. The proposed measures will be implemented in the following years, starting in 2025. As of 1 January 2028, the gift deduction in the personal income tax will be unified. As of then all types of gifts will be treated equally. More details on the proposed measures/restrictions are expected to follow when the Dutch Tax Plan 2025 is presented on Budget Day 2024 (17 September 2024).

Please note that according to recent reports, this proposed amendments to the gift deduction in income tax will be less far-reaching than initially anticipated.

Luxembourg

Director's activities / remuneration (VAT)

On 21 December 2023, the Court of Justice of the European Union (CJEU) ruled that a member of the board of directors of a public limited company incorporated under Luxembourg law carries out an economic activity, within the meaning of Directive 2006/112/EC (VAT Directive), but does not carry out that economic activity independently, insofar as the person concerned does not act on his own behalf or under his own responsibility and does not bear the economic risk associated with his activity.

The CJEU therefore rejects the position taken by the Luxembourg tax authorities, whom had indicated in a circular issued in September 2016 that the activity of company director constitutes an economic activity subject to VAT. Following this ruling, the unduly applied VAT can be regularized for the years still open under the limitation period. The limitation period is 5 years, but as an exception, the tax authorities have indicated that adjustments for 2018 will be accepted. Adjustments can be made using a specific online procedure.

Tax measures in the real estate sector

In response to a standstill of the Luxembourg real estate market, the Luxembourg legislator has introduced several measures aiming to increase the supply on the housing market and provide support for people wishing to buy or rent a home. For 2024, the tax credit for the acquisition of real estate intended for residential use has been increased from EUR 30,000 to EUR 40,000, a new tax credit for the investment in rental housing is also introduced of EUR 20,000 and a capital gain realized on real estate after a two-year holding-period will be temporarily taxed at maximum tax rate of 11.45%. As from 2025, a gain on real estate will be considered as non-speculative, and therefore benefitting from a 50% rate reduction, after a period of 5 years.

As from 2024, the law introduces some measures for an unlimited period, such as the increase of the exemption for net income from social rental management from 75% to 90% and the exemption of the capital gain realized by individuals upon the sale of real estate of properties sold to the Housing Fund. In the past, the latter exemption only applied on the sale of properties to the State, municipalities and local authority associations. The law also increases the amount of mortgage interest that are deductible for personal income tax purposes by one third.

Exemption of subscription tax for funds

With the law of 21 July 2023 amending the Product Laws and the Alternative Investment Fund Managers (AIFM) Law as adopted, the Luxembourg legislator brings substantial improvements to the Luxembourg toolbox for investment funds and their managers as well as greater consistency between the Product Laws to further increase the competitiveness of the Luxembourg fund center. Do you want to know more? See [our news article from 27 July 2023](#).

The Law contains an exemption from the subscription tax for SIFs, RAIFs and Part II UCIs authorised as ELTIFs under ELTIF 2.0 or if they are reserved to individual investors acting through a pan-European Personal Pension Product (PEPP) established under Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019.

Upcoming changes to the SPF law

On 17 July 2024, the Luxembourg government introduced a new bill of law including, amongst others, amendments to the "*société de gestion de patrimoine familial*" or the "SPF" regime. The tax treatment of an SPF remains unchanged.

An SPF remains subject to an annual subscription tax of 0.25% applied to a certain tax basis. However, the bill of law clarifies the determination of the amount of liabilities to be included in the taxable basis of the SPF and increases the minimum amount of subscription tax due to EUR 1,000.

The domiciliation agent of the SPF, or alternatively, an authorized auditor or chartered accountant should file the necessary compliance certificates before 31st of July of each year with the indirect tax administration (*Administration de l'enregistrement, des domaines et de la TVA*). The bill of law amends the requirements in such a way that this will have to be done electronically.

In the event the SPF does not fulfil its obligations under the SPF law, the bill of law introduces the possibility for the director of the indirect tax administration to impose administrative fines. The administrative fines are divided into two categories. First, a fine may be imposed up to a maximum of half the annual subscription tax due, or if it is not feasible to determine the amount, up to EUR 10,000, if the subscription tax returns of the required certificates are not filed before the deadlines. Second, a fine up to EUR 250,000 may be imposed if the SPF does not fulfil the requirements regarding its corporate form, object, eligible investor or articles of association.

Finally, a new procedural for the withdrawal of the SPF status would be introduced. The proposed new procedure and the administrative fines would apply to breaches of the SPF law occurring or continuing after the entry into force of the law.

Switzerland

Changes in practice concerning tax exemption for charitable foundations in the cantons of Zurich and Vaud

In February 2024, the Canton of Zurich relaxed its tax exemption provisions for charitable foundations, thereby enhancing its attractiveness as a location for foundations in Switzerland. It is now possible to compensate governing bodies appropriately (so that they no longer have to carry out their activities on a voluntary basis), the activities of the charitable foundation abroad are treated in a similar way to those carried out in Switzerland, and the charitable foundation is entitled to use a form of entrepreneurial support (loan).

In January 2024, the tax authorities of the canton of Vaud published guidelines concerning, among other things, the voluntary nature of foundation board members and their allowances. The new Vaud practice is more restrictive than that of the canton of Zurich, insofar as a distinction is made according to the number of hours devoted to the mandate.

Proposal to levy inheritance tax on inheritances of more than 50 million Swiss francs

The initiative submitted by the Young Swiss Socialists proposes the introduction of a 50% inheritance and gift tax at federal level on very large fortunes (i.e. over CHF 50 million), with the proceeds allocated to financing climate projects. This tax is to be levied by the federal government in addition to cantonal and communal inheritance and gift tax.

In May 2024, the Federal Council recommended that the Swiss Parliament reject the popular initiative on the grounds, among others, that Switzerland is already implementing an active climate policy, and Switzerland's attractiveness to wealthy individuals could be diminished. A referendum on the inheritance tax initiative may presumably take place in 2026.

Contact

Would you like more information having read this news article? Maybe an informal introductory meeting would be of interest? Please contact your Loyens & Loeff advisor or get in touch with one of our dedicated advisers in the [Family Owned Business & Private Wealth](#) team. We will be happy to help you.

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