The 100th Anniversary of the Belgian Income Tax

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1 Introduction

The Belgian Income Tax Code (the '**BITC**') originates from the new legislation adopted after the World War I and, more specifically, the law of 29 October 1919.[1] As a result, this fundamental piece of legislation underlying the Belgian income tax system is celebrating its 100th anniversary.

In consideration of that occasion, this article describes the rationale of the Law of 1919 and how it was affected by the other major income tax reform in Belgium in the twentieth century (1962). It concludes by discussing whether fundamental reforms are to be expected in this area in the near future.

2 The law of 29 October 1919

2.1 *Justifications Behind the Law of 29 October 1919*

Like most countries of the world, during the nineteenth and the beginning of the twentieth century, the Belgian Government primarily relied on *indirect* taxes and non-tax revenues (such as railways and toll fees). Moreover, the existing *direct* taxes (patent, land, mining, and personal taxes) were not calculated based on the actual value of the taxpayers' income or wealth. The personal tax, e.g. was based solely on external signs of wealth.[2] In practice, this meant that the tax system was skewed in favour of the rich since indirect taxes weighed more heavily on the poorer.[3]

It was subsequently following World War I that the Belgian legislator decided to correct this social injustice[4] while, at the same time, finding a way to balance the deficit caused by the economic downfall of the war.[5] This was achieved by fundamentally reforming its tax regime whereby, in the end, it resulted in the Law of 29 October 1919 that instituted the first Belgian income tax.[6]

2.2 *Principles of the Resulting Tax Regime*

According to the preparatory works to the reform, two different methods of taxation were initially considered.

On the one hand, there is the '*analytic method*' whereby the different forms of income are each subject to a separate tax. Advantages thereof are that the taxes can be levied

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1 BE: The Law of 29 Oct. 1919 establishing schedular taxes on income and an additional tax on globalized income, Belgian State Gazette 6373 (24–25 Nov. 1919).

2 More specifically: the rental value of one's property, the amount of doors and windows, the hearths, the furniture, the servants, and the horses. For a description of the Belgian tax system before WWI, *see* P. Janssen, *Taxation in The Habsburg Low Countries and in Belgium, 1579–1914*, in *The Rise of Fiscal States: A Global History* 67 et seq. (B. Yun-Casalilla, P. K. O'Brien eds, Cambridge University Press 2012).

3 A. Hardewyn, *De invoering en de evolutie van de progressieve inkomstenbelasting in België (1919–1930)*, 75 Revue belge de Philologie et d'Histoire 1086–1087 (1997). This form of social injustice was already criticized during the nineteenth century by e.g. X. Heuschling, *De la réforme des impôts en Belgique comme moyen de soulager le paupérisme*, 34 Journal des économistes 138 (1844).

4 'The idea of establishing fairness in tax is the guiding principle of this reform' (free translation) in House of Representatives, *Preparatory Works to the draft legislation introducing a tax on the global income*, no 108, at 1 (Session of 20 Mar. 1919). *See also* J. Ingenbleek, La justice dans l'impôt (Berger-Levrault 1918).

5 In 1922, Belgium's public debt was 141% of the GDP (103% in 2018). *See* A. Hardewyn, *Les déterminants politiques, économiques et idéologiques du système fiscal belge au xxe siècle*, Histoire, économie & société 2 (2005), at 282. *See also* Belgian Senate, *Report of the Finance Commission Charged with Examining the Draft Legislation Introducing Schedular Income Taxes and an Additional Tax on the Global Income*, no 256, (Session of 17 Oct. 1919), at 1; A. Tiberghien, *Handboek voor fiscaal recht* 11, para. 30 (Kluwer 2018); F. Buelens, *De levenscyclus van de beurs van Brussel, 1801–2000*, 65 Maandschrift Economie 165 (2001).

6 During WWI, income taxes based on the Prussian model had been applied on the Belgian territory by the German occupier but were repealed soon after Belgium recovered its independence in 1918. *See* S. Verreycken, *Un héritage allemand. Les nouveaux impôts de l'administration des Finances en Belgique (1914–1918)*, ParenThèses (5 Oct. 2016), https://parenthese.hypotheses.org/1472 (accessed 10 Aug. 2019).

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more easily at the source thereby limiting the possibility of fraud, and these various forms of income can also be taxed differently (e.g. income from capital can be taxed more severely than professional income).[7]

On the other hand, the '*synthetic method*' was contemplated for which one income tax is levied for all forms of income combined. This method is more appropriate for taking the personal situation of the taxpayer into account, for instance, by providing for minimum exempt income or by introducing progressive tax rates (that increase per additional tranche of income) to the taxpayer's global income.[8]

After weighing those pros and cons and in accordance with the example of France, the legislator decided to benefit from both methods by upholding a mixed approach comprised of:

– an application of the analytic method, separate (or 'schedular') taxes; and
– an application of the synthetic method as a manner of correction with an additional, overarching 'supertax' levied on the taxpayer's global income.[9]

Although heavily opposed by those who did not want to provide the government with any insight into their personal affairs, the tax reform also introduced the obligation to file a tax return as a general principle.[10]

2.3 *Schedular Taxes*

The schedular taxes included[11]

– the *land tax* calculated on the (actual or presumed) rental value[12];
– the *tax on income from movable property* on dividends, interest, and all other income derived from the utilization of capital[13]; and
– the *professional tax* on business profits, remunerations, fees, etc.[14]

These taxes were primarily meant to tax the income itself without paying attention to the personal circumstances of or personal benefits for the taxpayer (so-called 'real taxes'). They were each meant to be adapted merely to their respective form of income.[15]

Nevertheless, the legislator decided to introduce progressive tax rates within the schedular taxes as well. More specifically, the applicable professional tax rate increased progressively from 2% to 10% depending on the amount of taxable income.[16]

Interestingly, the taxpayer could deduct the professional tax relating to the previous year's taxable income.[17] This gave rise to a discrepancy between the nominal tax rates as stated in the Law and the effective tax rate, which was much lower (i.e. after taking said deduction into account).[18]

2.4 *Supertax*

The so-called 'supertax' (later coined as the 'additional personal tax') was levied on the sum of all income that was taxable under the schedular taxes at progressive tax rates ranging from 1% to 10%.[19]

The supertax was meant to be a fully fledged personal tax that considered the personal situation of the taxpayer. According to the preparatory works, the simultaneous application of the schedular taxes and the supertax was absolutely necessary to ensure that an individual's contribution to the government was determined by reference to that individual's ability to pay. Hence, it was a limited form of global income tax (which would be later adopted in 1962). This explains why taxpayers with less income could benefit from certain tax reductions from the global

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7 E. Schreuder, *Les impôts sur les revenus. Précis de législation et de jurisprudence* 9–10 (Bruylant 1957); House of Representatives, *Preparatory Works to the Law Regarding the Income Tax Reform*, no 264/1 (Session of 16 Jan. 1962), at 1.

8 House of Representatives, *supra* n. 7, at 1–2; House of Representatives, *supra* n. 7, at 1; P. J. A. Adriani, *Vergelijking tussen de Belgische en Nederlandse belastingstelsels* 26 (De Sikkel 1948).

9 Schreuder, *supra* n. 7, at 9–10.

10 Hardewyn, *supra* n. 3, at 1099.

11 BE: Art. 3 of the Law of 29 Oct. 1919.

12 BE: Art. 4 and 5 of the Law of 29 Oct. 1919.

13 BE: Art. 14 of the Law of 29 Oct. 1919.

14 BE: Art. 25 of the Law of 29 Oct. 1919.

15 House of Representatives, *Preparatory Works to the Draft Legislation Introducing a Tax on the Global Income*, no 320, at 12 (Report by the Middle Section); A. Clocheretand & S. van Belle, *Een historische benadering voor toekomstige hervormingen – De mogelijkheid tot een meer neutrale behandeling van inkomsten uit een zelfstandige activiteit en van eigen vermogen ten opzichte van vreemd vermogen*, 457 Tijdschrift voor Fiscaal Recht 225 (2014); F. E. de Visschere, *Het Belgisch belastingwezen en zijn grondbeginselen* (NV Standaard Boekhandel 1935).

16 BE: Art. 35 of the Law of 29 Oct. 1919.

17 BE: Art. 31, §3 of the Law of 29 Oct. 1919.

18 Clocheret & Van Belle, *supra* n. 15, at 233; P. Janssens, A. Tiberghien & H. Verboven, *Drie eeuwen Belgische belastingen: van contributies, controleurs en belastingconsulenten* 254 (EHSAL Fiscale Hogeschool 1990).

19 BE: Art. 44 of the Law of 29 Oct. 1919.

income tax and why a first tranche of (globalized) income was also tax exempt.[20]

The tax exempt amounts were determined by the composition of the taxpayer's family. The exempted tranche (or 'non-taxable minimum income') was, e.g. specifically meant to correspond to the income needed to ensure the fulfilment of the basic needs of the taxpayer's family. In practice, this meant that the minimum threshold was increased by 10% for every family member under the taxpayer's responsibility.[21]

As such, the legislation would aim to achieve the statement from Montesquieu *'l'Esprit des Lois'* according to which the essentials should not be taxed, the useful should be taxed, and the excessive should be taxed much heavier than the useful.[22]

3 The impact of the 1962 tax reform

3.1 *Evolution of Income Tax Law During the Period Between 1919 and 1962*

During the period between 1919 and 1962, there were no fundamental changes to the structure of the personal income tax. Nevertheless, that is not to say that there were no legislative changes at all because there were, in fact, substantial tax increases (the overall tax burden increased from 4% to 18 % of the GDP between 1920 and 1960[23]), and the rules became increasingly complex. Furthermore, certain special taxes were introduced (e.g. in the context of the World War II).[24]

3.2 *Motives Behind the Tax Reform of 1962*

On 2 May 1961, the Belgian government declared that the outdated and complicated tax rules that lacked both fairness and effectiveness should be replaced by a modern tax regime. These new rules had to encourage further investments and efforts, combat tax avoidance, and restore fairness. Income taxation had to become an instrument for an effective financial policy that served economic development.[25] This declaration eventually led to the Law of 20 November 1962 on the income tax reform.[26]

It is interesting to note that, once again, a call for fairness has led to a major reform of the Belgian tax system.

3.3 *Main Features of the Tax Regime After the 1962 Reform*

3.3.1 *Globalization*

First and foremost, the 1962 reform abolished the schedular taxes and the additional supertax and introduced a synthetic regime of taxation based on the taxpayer's 'global' income. Among others, this would eliminate the non-justified differences between the various forms of income and broaden the scope of progressive and personal taxation.[27]

The idea behind globalization was very simple: a taxpayer should pay the same amount of taxes on his income irrespective of the source of said income. There is prima facie no reason that an annuitant who is living from investments should benefit from a lighter tax regime than a worker who is existing from his employment.

As easy as it may seem, such globalization was very difficult to put into practice. In response to the 'complexity and special characteristics of the different forms of income', the antiquated schedular taxes had reincarnated in the form of three categories within the globalized income and were supplemented with a new category for so-called miscellaneous income. The resulting categorization, which is still applied today, is the following:

– income from real estate;
– movable income;
– professional income; and,
– miscellaneous income.[28]

Moreover, the taxes on globalized income were not meant to be levied in their entirety at the end of the taxable period. Instead, they were mostly levied immediately by withholding tax at the source (with the exception of miscellaneous income). Considering that these withholding tax rules differed per category of income,[29] it was factually a continuation of the old regime.[30] The legislator expressly recognized this by

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20 House of Representatives, *supra* n. 15, at 12; BE: Art. 41 of the Law of 29 Oct. 1919.

21 BE: Art. 42 of the Law of 29 Oct. 1919.

22 BE: House of Representatives, *supra* n. 15, at 67.

23 Hardewyn, *supra* n. 5, at 282.

24 Tiberghien, *supra* n. 5, at 11, para. 30.

25 House of Representatives, *supra* n. 7, at 1.

26 BE: The Law of 20 Nov. 1962 on the income tax reform, Belgian State Gazette 10674 (1 Dec. 1962).

27 House of Representatives, *supra* n. 7, at 8.

28 BE: Art. 3 of the Law of 20 Nov. 1962; currently Art. 6 BITC.

29 This was meant to ease the process of withholding taxes at the source. House of Representatives, *supra* n. 7, at 1.

30 House of Representatives, *supra* n. 7, at 51–52.

stating that the different withholding taxes replaced the old schedular taxes.[31]

For several reasons, several commentators were thus of the opinion that the reform did not introduce a fully-fledged synthetic approach. In this regard, one of the members of the Senate Finance Commission remarked that, given the many exceptions to the principle of globalization, the differences between the old and new regime are much less profound than they would initially appear to be.[32]

3.3.2 *Categorization of Taxpayers*

In addition, the legislator did create separate taxes for the different categories of *taxpayers.* This was a response to the fact that – contrary to most other economically developed countries – Belgium did not have a separate tax regime for companies. Instead, the taxation of a company's reserved profits was a prepayment for the taxes paid by the individual shareholders. As such, the legal personality of such entities was denied while, in reality, they acted autonomously from their shareholders. In addition, the separation of a corporate income tax was also deemed necessary due to income taxation becoming increasingly adapted to the personal needs and situation of the individual taxpayer (and the individual's family) which can, of course, not be extended to mere legal entities.[33]

As a result, the reform introduced the following four taxes:

– the personal income tax (Belgian resident individuals);
– the corporate income tax (Belgian resident companies);
– the legal entities tax (Belgian resident legal entities that are not subject to the corporate income tax); and
– the non-resident income tax (non-resident individuals, companies, and legal entities).[34]

The rules regarding personal income tax, however, were uniform and remained significant considering that the income taxable under the corporate income tax is principally determined by the rules that are applicable to the personal income tax. Their amount is thereby calculated solely based on the rules that are applicable to business profits (part of the professional income).[35]

3.3.3 *Income Taxes Are no Longer Deductible*

Another novelty was that taxpayers could no longer deduct the taxes that they had paid during the taxable period. The rationale hereto was that these taxes should no longer be considered as business expenses that were made to acquire or maintain income. This is because the deductibility would incite many adverse effects such as discrimination for those within their first taxable period given that they could not deduct any taxes, the alleviation of tax increases following tax evasion or fraud, the administrative burden, etc.[36]

3.3.4 *Continued Personalization*

The personalization for individual taxpayers that was first introduced in 1919 and extended to their globalized income in 1962 has remained until today. The present personal income tax regime, e.g. still provides for progressive tax rates and a non-taxable minimum – based, in part, on the composition of the taxpayer's family. Companies, on the other hand, are currently taxed at a flat rate of 29.58% (assessment year 2019, including the crisis contribution).[37]

3.4 *The Coordination of 1964*

With the Royal Decree of 26 February 1964,[38] the Law of 1962 was coordinated together with the other applicable legislation in what was now officially referred to as the Belgian 'Income Tax Code'.

4 Conclusion and future reform

Since 1964, the Belgian income tax code has been subject to countless changes and reforms. While the fundamental principles introduced by the 1962 reform (i.e. the four globalized taxes as well as the categories of income and their withholding) still remain, tax rules have substantially been modified over the years (e.g. corporate income tax rates varying from 48% to 25% between 1980 and 2020).

At the same time, the Belgian legislator is reluctant about introducing fundamental changes in the system

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31 House of Representatives, *supra* n. 7, at 100–102.

32 BE: Finance Commission, Senate 1961–1962, no 366, at 53.

33 House of Representatives, *supra* n. 7, at 13–14.

34 BE: Art. 1 of the Law of 20 Nov. 1962; currently Art. 1 BITC.

35 BE: Art. 24, §3 of the Law of 20 Nov. 1962; currently the consequence of Art. 37 BITC.

36 House of Representatives, *supra* n. 7, at 9–10.

37 Please note that small companies benefit, under certain conditions, from a decreased rate of 20.4% on their first EUR 100.000 of income (assessment year 2019, including the crisis contribution).

38 BE: Royal Decree of 26 Feb. 1964 on the coordination of the income tax rules, Belgian State Gazette 3810 (10 Apr. 1964).

considering the difficulty of estimating the budgetary impact.[39] This might explain why no fundamental tax reform has been introduced since 1964 except for a mere coordination of the Income Tax Code in 1992.[40]

The major reforms are hence the result of external constraints such as rules adopted at the European level or the need to preserve the Belgian competitivity on international markets. For a recent example, the 2017–18 corporate income tax reform can be referred to that introduced inter alia the implementation of the 2016 EU Anti-Tax Avoidance Directive and reduced the corporate income tax rates following the abolishment of specific advantageous tax measures such as the notional interest deduction.[41]

In parallel, since the financial crisis, it cannot be denied that there are voices requesting that more fairness be introduced in the Belgian tax system. It is interesting to note that one reform that is frequently advocated by scholars and interest groups, and even by some political parties, is to return to the spirit of the 1962–1964 tax reform, i.e. the global income tax. For example, the fact that, since 1983, Belgian individuals have been taxed on their movable income separately at a flat rate (today, fixed at 30%, with exceptions) rather than globally at the progressive tax rates is indeed perceived by the population as an unfair discrimination that favours the financially advantaged. Moreover, some items of income, such as capital gains on shares, often remain untaxed because of loopholes in the current legislation.

However, such a global tax on income appears difficult to implement, in part for the same reasons that existed in 1964. For instance, while several politicians appear to be in favour of such a global income tax regime, they are generally reluctant, e.g. to tax rental income at the same rates as professional income. The reason thereto is that real estate investments are regarded as a way to finance pensions and, consequently, increasing the taxation of real estate investment would lead to impoverished pensioners; this would not be perceived as a social justice measure by the population.

In this context, it appears unlikely that the Belgian legislator will take the risk of introducing a major reform of the BITC in the near future. Belgian recent tax history has indeed always been characterized by a certain conservatism (if not immobilism[42]), and this should not change in the twenty-first century. Additionally, the current political instability makes it increasingly difficult to carry out ambitious policies at the federal (and even regional) level.

Those who would like to see changes should probably look at developments in the European Union wherefrom major tax reforms will probably occur in the coming years (e.g. destination based tax in relation to the digital economy).

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39 The 2017–18 corporate income tax reform was e.g. explicitly meant to be neutral for the budget; House of Representatives, *Preparatory Works to the Law on the Corporate Income Tax Reform*, DOC 54, no 2864/001 (Session of 20 Dec. 2017), at 5.

40 BE: Royal Decree of 10 Apr. 1992 which has been confirmed by the Law of 12 June 1992, Belgian State Gazette 17120 (30 July 1992).

41 BE: The Law of 25 Dec. 2017 on the corporate income tax reform, Belgian State Gazette 116422 (29 Dec. 2017), which has however been modified by BE: Law of 30 July 2018 containing various provisions in income taxes, Belgian State Gazette 62656 (10 Aug. 2018).

42 Hardewyn, *supra* n. 5, at 279–302.