

FAIB Newsflash

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Legal reform of the annual wealth tax on NPOs

In theory, non-profit organisations (“NPOs”¹) with a registered office in Belgium are subject to an annual tax on their assets (« *Taxe compensatoire des droits de succession/Taks tot vergoeding der successierechten* », art. 147 to 160bis of the Belgian inheritance tax code (“**BITC**”)).

The annual tax (or ‘wealth tax’) on NPOs is a tax levied in lieu of inheritance tax, as inheritance tax is not applicable to legal persons.

Our newsflash dated 26 June 2023 was referring to a draft bill approved by the Government subject to a further advisory opinion of the State Council (“*Conseil d’Etat*” / “*Raad van State*”).

The law of 28 December 2023 brought up slight modifications to the draft bill. It came into force on 1st January 2024. This newsflash aims at highlighting such modifications.

The former wealth tax applied was at a rate of 0.17% on NPOs whose tangible assets (e.g. buildings located in Belgium or cash investments) and intangible assets (e.g. trademarks)) exceeded EUR 25,000.

The new regime doubled the exemption threshold (from EUR 25,000 to EUR 50,000). Furthermore, some NPOs remain completely exempted from the payment of this wealth tax due to the nature of their activities and goals².

¹ Including ASBL - AISBL - “fondation privée” / VZW - IVZW - “private stichting”, but not the “fondation d’utilité publique/stichting van openbaar nut”.

² Art.149 :
- approved family allowance compensation funds and approved mutual family allowance funds / « *les caisses de compensation agréées pour allocations familiales et les caisses mutuelles agréées d’allocations familiales* »;

The tax is levied on all assets which are the property of the NPO in Belgium and abroad. To be considered as 'possessions' within the meaning of art. 150, al. 1 of the BITC, they must be assets that the NPO owns for its own account and as owner.

In compliance with this new regime, the former wealth tax of 0.17% was replaced by a progressive rate, with a EUR 50,000 threshold summarized as follows:

< EUR 50,000	<i>exemption</i>
EUR 50,000 – 250,000	0.15%
EUR 250,000 – 500,000	0.30%
> EUR 500,000	0.45%

The associations whose assets remain inferior to EUR 50,000 are exempt from filing a tax return.

For NPOs with assets above EUR 350,000, the additional tax burden might be significant. For example:

<i>Eligible taxable assets</i>	<i>Former tax rate</i>	<i>Progressive rate</i>
EUR 300,000	EUR 510	EUR 450
EUR 1,000,000	EUR 1,700	EUR 3,300
EUR 10,000,000	EUR 17,000	EUR 43,800

The tax base remains unchanged except in one respect: the new regime tax is now also applicable to real estate located abroad. For this specific case and only subject to specific conditions, the tax levied abroad and paid on these foreign assets may reduce the amount of the new regime tax to be levied.

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- non-profit associations responsible, by law or by virtue of law, for managing the payment of pensions / « *les associations sans but lucratif chargées, par ou en vertu de loi, de la gestion du paiement de pensions légales* » ;
 - community or subsidized education authorities, for real estate used exclusively for education purposes, and non-profit asset management associations whose sole purpose is to use real estate for education provided by the aforementioned authorities / « *les pouvoirs organisateurs de l'enseignement communautaire ou de l'enseignement subventionné, pour les biens immobiliers exclusivement affectés à l'enseignement, et les associations sans but lucratif de gestion patrimoniale qui ont pour objet exclusif d'affecter des biens immobiliers à l'enseignement dispensé par les pouvoirs organisateurs précités* » ;
 - not-for-profit associations, private foundations or international not-for-profit heritage management associations that have been approved by the competent authority as nature conservation associations managing land and whose sole purpose is to acquire and manage a natural heritage for the purposes of conserving Belgium's natural heritage, provided that this heritage is managed as a nature reserve and is accessible to the public, where appropriate on guided tours / « *les associations sans but lucratif, les fondations privées ou les associations internationales sans but lucratif de gestion patrimoniale qui ont été agréées par l'autorité compétente en tant qu'associations de défense de la nature gérant des terrains et dont l'unique objectif est d'acquérir et de gérer un patrimoine naturel à des fins de conservation du patrimoine naturel de la Belgique, pour autant que ce patrimoine soit géré en tant que réserve naturelle et soit accessible au public, le cas échéant dans le cadre de visites accompagnées* » ;
 - institutions for occupational retirement provision that are subject to corporate tax / « *les institutions de retraite professionnelle qui sont assujetties à l'impôt des sociétés* » ;

To mitigate the impact of the new progressive rate, the new tax regime exempts from the tax base the following assets when they are related to specific activities:

1° 62.3% of the value of the assets of a NPO:

- (i) whose turnover consists of more than 50% of transactions exempt from VAT under article 44, § 2, 1°, 2°, 3°, 4°, a), or 9° CVAT;

This refers to :

- health institutions and sector (art. 44, §2, 1° CVAT);
- social and care sector (crèches, rest homes, family and social assistance, mutual benefit societies...) (art. 44, §2, 2° CVAT);
- sports sector (art. 44, §2, 3° CVAT);
- education sector (art. 44, §2, 4° a) CVAT);
- artistic and cultural sector (art. 44, §2, 9° CVAT).

- (ii) or who allocates at least 75% of its assets to the carrying out of such operations by a third-party organization.

This refers to the case of an ASBL/foundation that does not own its proper infrastructure, but that operates the one housed in a separate asset based ASBL/foundation.

2° 62.3% of the value of the assets of a NPO (i) who carries out operations in the following activities or (ii) who allocates at least 75% of its assets to the carrying out of such operations by a third-party organization :

- adapted work companies;
- medical centers;
- animal shelters;
- private archive centers.

Please note that the new tax regime applies as of 1st January 2024. This means that the tax return to be filed by 31 March 2024 at the latest must take into account the abovementioned new tax regime.

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