Belgium

European Court of Justice rules that different tax treatment for real estate located within and outside of Belgium is not in line with EU provisions

Executive summary
The European Court of Justice has ruled that the difference in the tax treatment for real estate located outside of Belgium compared to that within Belgium constitutes a restriction on the free movement of capital. Belgium will be required to amend its legislation to remove the different treatment.

This preliminary ruling will therefore impact the way foreign income must be reported by Belgian residents.

Background
Under current legislation real estate located in Belgium which is not rented out is taxed on the basis of the so-called “cadastral income” of the property. The cadastral income is a deemed rental income, which for most properties is significantly lower than the property’s actual rental value on the market.

However for property located outside Belgium, the taxable income is equal to the property’s actual rental value, rather than its cadastral income. Even though fixed property located outside Belgium is generally taxable in the country where the property is located, Belgian residents are required to report the rental value of such property on their Belgian tax return. This foreign income is not taxed in Belgium, but is taken into account in order to determine the tax rates applied to the other income which is taxable in Belgium (known as exemption with progression). It therefore pushes the taxable income into the higher tax rates and bandings.

As a result of the combination of exemption with progression and the fact that foreign real estate is assessed on the basis of its rental value - rather than its cadastral income as is the case for a property located in Belgium - Belgian resident taxpayers with real estate property located in another Member State may suffer from a higher overall rate of taxation, when compared to taxpayers in the same situation with real estate located in Belgium. This has been ruled by the European Court to be a forbidden restriction on the free movement of capital.

Next steps
Belgian resident taxpayers should review the impact on their overall tax rate where property located outside Belgium would be assessed on the basis of its cadastral income rather than the rental value, and may on this basis decide to file a claim or amend their Belgian tax filings.
Belgium will be required to amend its legislation in order to comply with the EU ruling. An obvious remediation is to extend the reporting of cadastral income to real estate located outside Belgium. This court ruling could also put the broader issue of taxation of rental income - deemed cadastral income versus actual rental income received - on the agenda of political parties or the Belgian government.

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