

Personal income tax and legal entities income tax

Tax on capital gains on financial assets: all you need to know (law and circular letter)

The Law of 6 April 2026 introducing a tax on capital gains on financial assets (Belgian Official Gazette, 21 April 2026) entered into force on 1 May 2026 and applies to capital gains realised on or after 1 January 2026. Circular Letter No. 2026/C/74 of 22 July 2026 sets out the Belgian Revenue Service's commentary for personal income tax purposes. Herein below we provide an overview of the regime, of its practical points of attention and of its consequences for transferors.

Key points:

- Three regimes coexist: (A) internal capital gains (33 %), (B) substantial shareholdings (progressive scale from 1.25% to 10%, exemption of first tranche of EUR 1,000,000) and (C) the residual general regime (10%, annual basic exemption of EUR 10,000).
- Only realised capital gains accrued as of 1 January 2026 are taxed: for financial assets held as at 31/12/2025, the acquisition value may, in certain cases, be fixed at that date (*step-up*), subject to proper documentation. For unlisted assets, only a limited number of valuation methods are accepted. In practice, a valuation report by a registered auditor or an independent certified accountant (CPA) must be established no later than 31 December 2027; failing this, generally only the EBITDAX4 formula will remain available.
- For financial assets held with a financial intermediary established in Belgium, a withholding tax of 10% is being levied since 1 June 2026, with the possibility of an opt-out; other capital gains must be reported in the taxpayer's annual income tax return.
- Departure from Belgium is treated as a transfer (exit tax), the tax being extinguished where the financial assets are retained for 24 months.

To Do:

- Take stock of the financial assets held as at 31 December 2025 and, for each of them, document the valuation method chosen and its supporting evidence.
- For unlisted assets: decide before the end of 2026 whether a registered auditor or an independent certified accountant should be appointed, so as to have the report by 31 December 2027.
- Retain evidence of the historical acquisition value of portfolios built up before 2026, in view of the option available until 31 December 2030.
- Review the articles of association of general partnerships and shareholder agreements in the light of the new realisation events.
- Factor the tax burden and the timing of taxation into the negotiation of price clauses – particularly *earn-out* clauses – and into any consideration of a transfer of residence.

Our team is available for you to examine the specific impact of this new regime on your wealth situation or on your disposal plans.

1. GENERAL FRAMEWORK AND SCOPE

1.1 Capital gains covered

The capital gains in scope of the new capital gains tax are those realised **outside any professional activity** and as part of the **normal management of private assets** (art. 90, para. 1, 9°, ITC 92), on the occasion of a transfer for consideration.

Speculative transactions, or transactions exceeding normal management, remain taxable at 33% plus municipal surcharge.

The regime specific to corporate income tax remains unchanged and the tax does not apply to non-residents taxpayers.

1.2 Taxable person

The capital gain is taxable in the hands of the **owner** or the **bare (or legal) owner**; any usufructuary (or economic owner) is not concerned. For married taxpayers, the matrimonial property regime determines the allocation of the taxation.

1.3 Financial assets covered

The concept is broad, but exhaustive, and comprises four categories:

- **financial instruments** within the meaning of the Law of 2 August 2002 (in particular securities such as shares and bonds, money-market instruments, units in UCIs, ETFs and ETNs, option contracts and derivatives, including foreign ones, and emission allowances);
- **insurance contracts and capitalisation transactions** of branches 21, 22, 23, 26 and 44 and their foreign equivalents, excluding outstanding balance insurance and funeral expenses insurance;
- **crypto-assets** (within the meaning of the MiCA Regulation); and
- **currencies and investment gold.**

Conversely, **payment instruments** – that is, the means by which a payment is technically executed – are **out of scope**. They must be distinguished from payment funds and crypto-assets, which do fall within the scope of the tax.

According to the Circular Letter, the units of a simple partnership (société simple) are earmarked as securities: their transfer falls within the scope of the tax, even where the simple partnership holds no financial asset. In our view, this position may be open to challenge.

1.4 The transfer for consideration

Only a transfer **for consideration** is in scope (gifts and transfers upon death are not, subject to the analysis of the consideration in the case of a gift with charge).

Two types of transactions are treated as equivalent and, therefore, also in scope: the payment **on survival** of capital and surrender values of life insurance contracts and capitalisation transactions, and the **transfer abroad** of one's domicile or of the seat of one's wealth.

The moment of realisation is decisive, irrespective of actual payment.

Any conversion of crypto-assets, including from crypto to crypto, constitutes a realisation.

2. THE THREE TAXATION REGIMES

A transfer falls under one provision only, the more specific taking precedence over the more general one: type A prevails over type B, which in turn prevails over type C.

	Type A - Internal capital gain	Type B - Substantial shareholding	Type C - General regime (residual)
Transaction covered	Transfer of shares, units or profit-sharing certificates to a company controlled by the transferor , alone or together with close family members	Transfer of shares or units by a taxpayer directly holding at least 20% of the rights in the capital	All other capital gains on financial assets
Rate	33% (no municipal surcharges)	1.25% / 2.5% / 5% / 10% by bracket; 16.5% on a transfer of Belgian shares to a legal entity established outside the EEA (no municipal surcharge)	10% (no municipal surcharges)
Exemption	Contribution of shares or units	Contribution of shares or units EUR 1,000,000 over 5 taxable periods, not indexed for inflation	Contribution of shares or units EUR 10,000 (tax year 2027) + additional bracket of EUR 1,000 as from tax year 2028
Collection	Personal income tax return	Personal income tax return	Withholding tax of 10% (financial instruments and insurance) or tax return

2.1 **Type A – Internal capital gain**

This covers the sale of shares, units or profit-sharing certificates to a company over which the transferor exercises **direct or indirect control**, alone or together with members of his close family (spouse or legal cohabitant, descendants, ascendants and collaterals up to the second degree, as well as those of the spouse). Control is in principle assessed at the time of the transfer.

Certain corrections are expected through an amending law in order to resolve the inconsistencies in the current legislation.

2.2 **Type B – Substantial shareholding**

The transferor must himself hold, directly, **at least 20 %** of the rights in the capital, irrespective of the transferee. Holdings of close family members are irrelevant: married taxpayers holding the shares in community will have to reach 40% to have a substantial shareholding.

Profit-sharing certificates, options and warrants, not being shares, are not included in the calculation of the threshold, which is assessed at each transfer.

The EUR 1,000,000 exemption operates as a “backpack” usable over five consecutive taxable periods; the balance is taxed by bracket (1.25% up to EUR 2.5 million, 2.5% from EUR 2.5 to 5 million, 5% from EUR 5 to 10 million, 10% above).

Transfers of shareholdings in Belgian resident companies to a legal person resident outside the EEA are, by way of exception, subject to the rate of 16.5 % (tax regime unchanged, already effective before 1 January 2026).

2.3 **Type C – The general regime**

Residual category taxed at 10% (without municipal surcharges).

The basic exemption amounts to EUR 10,000 for tax year 2027, which represents a maximum tax saving of EUR 1,000 at the rate of 10%.

Where the basic exemption is not used, an additional exemption of up to EUR 1,000 per year may be built up and renewed until a maximum of EUR 5,000 is reached, subject to compliance with several strict conditions.

3. TAXABLE BASE, ACQUISITION VALUE AND THE “SNAPSHOT” AS AT 31 DECEMBER 2025

3.1 Taxable base

The capital gain is the positive difference between the price or value received and the acquisition value.

No costs can be deducted – e.g. neither the stock exchange tax nor the auditor’s fees are deductible. In the event of an acquisition free of charge, the acquisition value of the predecessor in title is retained. The payment of inheritance or gift tax is disregarded.

The FIFO method applies to identical assets, separately for each account where several accounts exist.

For **assets acquired prior to 1 January 2026**, the initial acquisition value is replaced by the value of the asset at 31 December 2025: historical capital gains (prior to that date) escape the tax (step-up).

3.2 Valuation methods as at 31 December 2025

- **Listed assets** on a regulated or regularly active market: last closing price of the year 2025.
- **Insurance contracts** and capitalisation transactions: inventory reserve as at 31 December 2025, reduced proportionally in the event of a subsequent partial surrender; until 31 December 2030, the taxpayer may demonstrate that the total premiums paid exceed that reserve.
- **Unlisted assets**: the highest of four values:
 - the value used in a **transfer** between fully **independent parties**, in the incorporation of a company or in the last capital increase that took place **in 2025**;
 - the value resulting from a valuation formula contained in a **contract** or in a contractual **offer** of a put option that was **in force on 1 January 2026**;
 - for shares and similar instruments, the value of the issuer’s equity increased by **four times EBITDA** of the last financial year closed before 1 January 2026 (equity alone if EBITDA is negative);
 - the value established by a **report established before 31 December 2027** by an independent registered auditor – other than the statutory auditor – or by an independent certified accountant.

The legislative history specifies that a 2026 transaction cannot serve as a reference, even if based on the value as at 31 December 2025, and that in the event of multiple capital increases in the course of 2025 only the last one is taken into account. The EBITDA formula is read from the accounts of the last closed financial year, with no possibility of including subsequent results: it penalises companies with a non-calendar financial year and loses all economic relevance for holding companies since the numbers of their subsidiaries are not taken into account (generally speaking, non-publicly traded holding companies do not value their equity investments at current market value as at the reporting date, but rather at cost).

3.3 The derogatory regime for transfers through 31 December 2030

Where the historical acquisition value exceeds the value as 31 December 2025, the taxpayer may, upon request and only for transfers carried out up to and including 31 December 2030, have the capital gain

calculated on the basis of that actual value, the burden of proof of which the taxpayer bears in full. Consequently, it is strongly advised to retain evidence of the historical acquisition value of portfolios built up before 2026, in view of the option available until 31 December 2030. This option can never give rise to a capital loss: at most it reduces the capital gain to zero. The calculation is then made on the average acquisition value and not according to the FIFO method.

3.4 Capital losses

They are deductible only if they are realised during the **same taxable period**, by the same taxpayer and within the same category (type A, B or C), with no carry-forward of unused losses. Within the general regime, offsetting is broad: a capital loss on crypto-assets can be offset against a capital gain on listed shares. For assets acquired before 2026, the capital loss is also calculated by reference to the snapshot, which may give rise to a tax loss even though the transaction is economically profitable.

4. DEPARTURE FROM BELGIUM: THE EXIT TAX

The loss of the status of resident of Belgium is **treated as a transfer for consideration**: the latent capital gain is taxed at 10%, or according to the progressive scale for substantial shareholdings where its conditions are met at the time of departure, the corresponding exemption remaining applicable.

Payment is automatically deferred if the taxpayer becomes a resident of an EU or EEA Member State, or of a State linked to Belgium by a bilateral tax treaty providing for the exchange of information and mutual assistance in recovery. In all other cases, it is optional and subject to sufficient security (to be analysed on a case-by-case basis). For 24 consecutive months, the assets can neither be transferred for consideration nor encumbered with a security interest in rem, and the taxpayer must retain his residence in one of the jurisdictions concerned, and a certificate to that end must be filed annually. The tax is extinguished if the taxpayer re-establishes his tax residence in Belgium **within 24 months** or if he remains resident abroad beyond that period.

5. COLLECTION AND REPORTING OBLIGATIONS

A **withholding tax of 10%** is levied by financial intermediaries and insurance undertakings solely on capital gains relating to financial instruments and insurance contracts, with an **opt-out** option for the taxpayer.

The levy takes no account of exemptions, capital losses or a higher historical acquisition value: the annual income tax return allows the taxpayer to **correct** this, supported by documentary evidence.

Capital gains on crypto-assets, currencies and investment gold, as well as those falling under the exit tax, must always be reported in the annual income tax return.

The withholding tax has only been levied since 1 June 2026; for the period from 1 January to 31 May 2026, an opt-in mechanism allowed the payment of an equivalent amount. If the taxpayer did not make use of the opt-in mechanism, reporting in the 2026 income tax return is mandatory.

Finally, Article 326bis ITC 92 imposes on intermediaries involved in type A and type B transactions a reporting obligation covering the price obtained and the identity of the parties. Persons bound by professional secrecy (legal privilege) are exempt from such reporting and, in accordance with the case law of the Court of Justice, lawyers are not even required to inform the other parties involved.

6. PRACTICAL POINTS OF ATTENTION

6.1 Deciding without delay on the valuation of unlisted assets

The deadline of **31 December 2027** is a very important one: **in the absence of a report** drawn up by a registered auditor or a certified accountant by that date at the latest, only the three other valuation methods will be available. In practice, this will most often result in the application of the “equity + 4 × EBITDA” formula, with the distortions noted above.

The tax authorities have indicated that they will not arbitrate between diverging reports among shareholders and that they will call a valuation into question only in wholly exceptional situations.

6.2 Simple partnerships

Tax transparency remains, but **entries and exits become potential realisation events**.

The contribution of financial assets is in principle a transfer for consideration, except where the proportions between the partners remain unchanged; the contribution of shares or units also benefits from the exemption provided by law – but not the one for bonds or other financial assets.

The admission of a new partner systematically entails an implicit exchange and a partial realisation.

Moreover, the transfer of units falls within the scope of the tax even in the absence of underlying financial assets, a position that appears to us questionable in light of the tax transparency of a simple partnership.

Finally, an appropriate provision in the articles of association makes it possible to depart from the default allocation of capital gains in equal shares among the partners.

6.3 Exits from joint ownership

An exit from joint ownership constitutes a transfer for consideration to the extent that it entails an implicit exchange of assets between the joint owners.

An exemption is provided for exits occurring **within three years** of a decease, a divorce or the end of a legal or de facto cohabitation; the original acquisition value nevertheless remains applicable on the subsequent transfer.

6.4 **Stock options**

For the purposes of calculating the capital gain within the meaning of this new legislation, shares and similar instruments received under the stock option regime (Law of 26 March 1999) will have as their acquisition value the value of the share **at the time the option is exercised**, and not its value at the time the option is granted (which is the taxable event under the Law of 26 March 1999).

6.5 **The general anti-abuse provision**

The general anti-abuse provision is liable to apply to all transactions. The following examples are listed in the Circular Letter: a gift to a non-resident followed by a resale and a repayment of the price, the transfer of the current account balance to the children after a sale to their holding company, the acquisition of joint control after a transfer escaping the internal capital gains regime, or series of successive resales designed to circumvent the 16.5% rate. A recharacterization as a dividend may, moreover, cover the entire price, including the historical capital gain that is in principle exempt.

7. **INSIGHTS FOR BUSINESS OWNERS AND TRANSFERORS**

7.1 **Private equity, MBO and entry of a third-party investor**

The internal capital gains regime applies only if the transferor exercises control over the acquiring company alone or together with one or more close family members: joint control with a *private equity* fund or with management does **not** fall within its scope.

The clauses customary in such transactions – veto rights, strategic agreements, nomination rights – should not, in themselves, suffice to establish control.

Particular vigilance is nevertheless required as regards the right to appoint the majority of the directors and any change of control after the transfer, which may need to be revisited from the perspective of tax abuse.

7.2 **Family transfer and share buy-back**

The transfer by the parents of the shares of the operating company to the holding company owned by their children escapes the internal capital gains regime, provided the parents exercise **no control** over it – subject to the treatment of the current account. The transaction will then fall under the substantial shareholding regime or under the general regime. By contrast, a buy-back of shares by a company controlled by the seller may fall under the internal capital gains regime, including in the context of incentive plans.

7.3 **Earn-out clauses**

Price supplements relating to a transfer carried out before 1 January 2026 escape the new tax, irrespective of their payment schedule.

For transfers concluded as from that date, the *earn-out* is analysed as a realisation subject to a condition precedent: the capital gain is taxable only in the taxable period in which the supplement becomes **certain** and **due**, i.e., *when the condition(s) precedent is (are) realized*. The rates and exemptions of the substantial shareholdings regime also apply to these subsequent payments.

The question remains open whether the initial price and the supplement must be aggregated in order to preserve the progressivity of the scale.

CLOSING REMARK

This newsletter is based on the legal texts, legislative history and administrative commentary available to date. Certain practical aspects, in particular the reporting arrangements and the interpretation of some valuation concepts, will need to be confirmed in the light of the tax return forms, of administrative practice and, where applicable, of subsequent commentaries.

An amending law is expected before to be adopted by the end of the year in order to address certain legislative inconsistencies. The scope of that amending law is, however, not yet entirely clear and the draft is not publicly available; an update may therefore be required in the light of the content of that future law.

Contacts



+32 (0)2 891 80 55



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