

# Taxation: Commission refers Belgium to the Court due to its tax treatment of taxpayers investing in property abroad

Today the Commission decided to refer Belgium to the Court of Justice of the EU for its failure to properly implement rules related to the calculation of rental income. This situation can result in different tax treatment and discourage Belgian residents from buying property abroad.

In its judgment of 12 April 2018 (Commission vs Belgium, [C-110/17](#)), the Court found that Belgian provisions for rental income run contrary to EU law. Rental income of taxpayers in Belgium from immovable property located abroad is calculated on the basis of the actual rental value, while for property located in Belgium it is based on the cadastral value – which is to say, calculated by reference to the property description and valuation. This means that Belgium failed to fulfil its obligations under free movement of capital ([Article 63](#) of [TFEU](#) and [Article 40](#) of [the EEA Agreement](#)).

The legislation means that for tax purposes, Belgium assesses income earned from a Belgian resident owning property located abroad at a higher value than that from comparable property in Belgium. Belgian law therefore favours investments in certain properties located in Belgium and penalises taxpayers who choose to invest in similar property in other EU Member States or the European Economic Area (EEA).

The Commission is calling on the Court of Justice of the EU to impose financial sanctions in the form of a lump sum based on a daily amount of € 4,905.90 per day of continued infringement, i.e. the number of days between the first judgment of the Court under Article 258 TFEU and either compliance by Belgium or the date of delivery of the judgment under Article 260(2) of TFEU, with a minimum lump sum of € 2,029,000.00 and a daily penalty payment of € 22,076.55 from the day of the first judgment until full compliance is reached or until the second Court judgment.

## **Background**

The Court of Justice of the EU had previously established the incompatibility of Belgian legislation with EU law in a preliminary ruling procedure, which gave rise to the judgment of 11 September 2014 (Verest and Gerards, [C-489/13](#)).

In the absence of measures to comply with this judgment, the European Commission decided to open infringement proceedings against Belgium by sending a letter of formal notice in [November 2018](#). Since then, Belgium has not modified the applicable legislation.

With today's decision, the European Commission is enforcing EU legislation in its role as Guardian of the Treaties. The decision to refer the matter to the

Court follows Belgium's failure to bring its legislation into line with EU law following the Court's previous judgment.

If the Court finds that Belgium has not complied with its judgement, it may impose a lump sum or penalty payment.

#### **For More Information**

- On the key decisions in the July 2019 infringements package, see a full MEMO: [INF/19/4251](#).
- On the general infringements procedures, see [MEMO/12/12](#).
- On the [EU infringement procedure](#).