When contemplating acquisition and holding of real property in Belgium, the nonresident investor will have to consider four types of taxes bearing on real estate:

- The real property tax ("précompte immobilier"/"onroerende voorheffing"
  (literally "real property prepayment");
- The income tax on individuals or corporations;
- The indirect taxes levied on the transfer of real property: VAT or registration duties;
- Some local taxes on land or buildings.

Belgium is now a federal state, and some of those taxes are within the competences of the Regions (Bruxelles-Capitale, Walloon Region and Flemish Region). From the nonresident viewpoint, the applicable law will be determined by the situs of the real property.

In Belgium, resident individuals and corporations are taxed on their worldwide income, while taxation on nonresident taxpayers is limited to their Belgian source income that is defined as taxable income.

We assume that the foreign individual or corporation is deemed a nonresident taxpayer in Belgium.

I. Gains from the sale of Belgian real estate

A. Principles

The income tax situation of FP in respect of gains derived from the sale of Belgian real property will be different according to the intensity of his real estate activity. He may invest as a private investor, without exceeding the boundaries of the management of private assets (1). He may, still as a private individual, exceed such boundaries (2). Finally, he may, by a continuous activity in the field of real property, exercise a profession in that sector and be taxable on business income as a professional (3).

- The term "normal administration of a private fortune" is a term of art that has given rise to a substantial volume of case law. Generally, the term is construed as referring to any normal act of management taken by a reasonable person with regard to his private, i.e., non-professional, wealth or fortune.
- It falls outside the scope of this study to examine the possible criteria to determine whether non-professional activities fall outside the course of the normal administration of an individual's private fortune. However, we can sum up some of the most frequently used criteria: (i) the number and the frequency of the transactions; (ii) the financing of the acquisition by a loan; (iii) the way transactions are structured, e.g., by using commercial methods such as advertising; and (iv) the occupation of the individual concerned connecting him with the real estate market, in Belgium or abroad. 1

Given these criteria, an assessment has to be made on a case-by-case basis. However, in general, property gains as a result of holding and selling for speculative purposes will probably, but not necessarily, qualify as this type of miscellaneous income.

- As for professional activity, it will not always be easy to determine whether real estate property is part of the business of a nonresident. In general, this will be determined based on the worldwide activity of the nonresident. 2 For instance, if a nonresident's worldwide activity concerns real estate development and transactions, the Belgian real estate is likely to be considered as a business asset, even if the nonresident does not have a professional profile in the Belgian real estate market.

B. Tax basis and rates

1. "Short-term capital gains"

If FP acts as a purely private investor, often described in Belgian law as a "good family father," 3 he will as a general rule not be subject to tax on the capital gain realised on the resale of real property. There are exceptions to that rule. Some short term capital gains on buildings or land are taxable as miscellaneous income, even when they are realised within the scope of the management of private assets.

- Capital gains realised on uninstalled land will be taxable at 33 percent if the resale takes place within five years of acquisition and at 16.5 percent if the resale takes place after five years but before eight years from acquisition. 4

The net amount of the taxable gain is determined by deducting from the sales price the sales expenses. The purchase price is increased by the amount of acquisi-
tion expenses. Failing justifications, the increase amounts to 25 percent of the purchase price. The purchase price is then increased by 5 percent for each year of ownership.5

- Capital gains on buildings which have been purchased and which are sold within five years of purchase are taxable at the rate of 16.5 percent.6

- Capital gains are also taxable if a nonresident individual has built on the land that he acquired within five years, insofar as construction works started within five years of the acquisition for consideration of the land by the nonresident individual and the transfer of the entire real property occurs within five years of the date of the first occupancy or letting of the building.

In such cases, the nonresident income tax, at a flat rate of 16.5 percent, will be levied on the difference between, on the one hand, the consideration received less any expenses incurred in disposing of the property and, on the other hand, the initial acquisition price of the property increased by the actual acquisition expenses. If no justification of the actual expenses is provided, they are estimated at 25 percent of the initial acquisition price. Furthermore, the total acquisition price is adjusted by 5 percent per year for each year during which the property was held by the taxpayer to take account of inflation. If the nonresident individual has erected the building, the holding periods of the land and the building are taken into account separately to perform this adjustment. Finally, the acquisition price may be increased by expenses for work done on the building after its acquisition, first occupancy or letting and reduced by any possible compensation received for damages to the building.

Any capital losses incurred may be carried forward for five years. Such losses can be set off against gains of the same category only.7

2. "Speculation" or "operations"

If FP goes beyond the management of private asset but does not become a professional, the gain which results from the operations or speculations going beyond private management will be subject to tax.8 The taxable gain will be the net gain, computed under deduction of all expenses made to improve or develop the property.9 The Supreme Court first held that the taxable gain was only the gain resulting from the activity exceeding private management.10 If the building has acquired a certain value by the mere passing of time, but the owner then obtains a higher price thanks to extensive advertising and marketing activity, one could think that only the latter portion of the gain will be taxable. However, the Supreme Court has now held that the full gain is taxable.11

The tax on miscellaneous income is always due not on an accrual basis but on a cash basis, when the seller receives the price.12

Losses may be deducted only from the gains realised on similar transactions, either during the tax year or during the five following tax years.13 The flat rates are applicable only if the standard global rate is more favourable to the taxpayer. This will almost never be the case except if the gain is substantially reduced by deductible losses.

3. Professional activity

If, because of the frequency and continuity of his real estate activities, FP engages in a business giving rise to professional income, he should register as an "entrepreneur" at the Crossroad Enterprise Bank and be attributed a registration number. He should also contemplate registering as a VAT taxpayer and/or as a professional reseller under the Code of Registration Duties.

Examples in case law have been a permanent activity consisting in purchasing, selling and renting real property, eventually with borrowed funds.14 However, private management is not exceeded because it merely requires many actions by a private owner.15

From an income tax point of view, the capital gains of FP acting as a professional will be taxable at the progressive rate applying to individuals. However, an exception exists for tangible assets which have been used in a professional activity for five years. Such gains are taxable at the reduced rate of 16.5 percent.16

A roll-over regime applies to capital gains realised on fixed assets but not to assets held as inventory. Capital gains realised on fixed assets may enjoy a deferral of taxation if the sales price is reinvested in depreciable assets located in the European Economic Area.17 For capital gains realised on buildings or land, the reinvestment must take place normally within three years starting at the beginning of the taxable year during which the gain is realised. However, if the sales price is reinvested in a building, reinvestment may take place within five years and the five years may start, at the option of the taxpayer, on the first day of the taxable year during which the gain is realised or on the first day of the penultimate tax year preceding the year during which the gain was realised. This allows the seller of a building to erect or purchase a new building before selling the old one in order to continue exercising his activities in an available building.

In the case of roll-over, the gain will be taxable proportionately to the depreciation taken on the asset in which the taxpayer has reinvested. This is tantamount to keeping a roll-over basis for tax purposes but the actual computation is: taxation of the gain less depreciation on the new basis, being the price of purchase or construction of the new asset(s).

Both the reduced tax rate and the roll-over facility apply only to fixed assets. In the case of FP, this facility would be available only for the building or buildings in which FP exercises his professional activity. His other buildings or pieces of land would be considered as inventory. Gains on inventory would be taxable at the normal progressive income tax rates.18

FP will be taxable not only if he is considered to have a Belgian establishment, which is defined, in terms very similar to the OECD definition, as any fixed place of business through which he would exercise his professional activity in Belgium19 but also, if, without having such establishment, he professionally sells real property located in Belgium.20

This is generally considered to be consistent with the OECD Model Tax Convention since the wording of Articles 6 and 13 is general - income derived from immovable property may be taxed in the State where the property is located. The provisions of these Articles
cannot be affected by Article 7 regarding business profits (art. 7, § 7).21

In principle, no previous losses will be taken into account in determining the amount of such professional withholding tax,22 nor will any other special exemptions be taken into account, since the professional withholding tax is not the final tax on nonresident professional income. Indeed, the professional withholding tax is creditable against the final nonresident income tax assessed on the aggregate net income of the nonresident for the year concerned. For the computation of this aggregate net income, previous losses and other special measures can be taken into account.23 Moreover, the withholding is refundable if it exceeds the nonresident income tax due.

C. Payment of the tax

As a rule, the tax due by the nonresident taxpayer must be withheld and paid to the tax authorities when the capital gain is realised.24 In most cases, the person liable for the withholding is the notary public.25 The notary shall withhold the tax and pay it to the Registration Duties Administration (capital gains realised by individuals within the non-professional sphere, the rate being of 33 or 16.5 percent26) or to the Direct Tax Administration (for professional gains, including gains by companies, at a rate of 30.28 percent,27 and for speculative gains (at a 33 percent rate)).

The obligation for the notary to withhold the tax extends to capital gains exceeding the limits of private management. It will in some cases be difficult for him to know whether the limits are exceeded.

II. Income tax treatment of income derived from Belgian real estate held by a nonresident individual

A. Cadaster

From the point of view of direct taxes, each piece of property in Belgium is individualised in a descriptive ledger called the "cadaster."28 A cadastral income is attributed to each piece of property, whether built or unbuilt. Such income is supposed to correspond to the deemed net annual rental income of the land or building. This net rental value is the gross rental value under deduction of a lump sum for depreciation, maintenance and repairs, equal to 40 percent for buildings and 10 percent for land.

For new buildings, the determination is made by comparison with the rental value of similar buildings or with the cadastral income of similar buildings which has been assessed under a final assessment. When such comparison is not possible, the cadastral income is equal to the market value of the property multiplied by 5.3 percent.

A cadastral income is determined for new buildings, but also for existing properties incurring important changes (be it renovation or destruction). The new cadastral income must be based on 1975 values.

The cadastral income is supposed to be reviewed regularly, every ten years. However, the last general revision came into effect in 1980 and was based on market prices of 1975. This can be explained by the fact that the property tax revenue benefits regions and municipalities, while the administrative costs of the revision would be supported by the federal administration of the Cadaster. The non-revision of cadastral income since 1980 also explains why, for certain tax purposes, cadastral income will be adjusted annually based on the retail price index.

B. Income from investments

1. Principles

1. Real property in Belgium held by an individual for his personal use is exempt from income tax and is thus subject only to the real property withholding tax; the taxpayer does not have to include any cadastral income in his tax return in Belgium.29

2. If FP rents to third parties real property which he has acquired in Belgium, without entering into a real property sales and rental business, he will be taxable under the Code heading of "Income from real property."

If the real property is rented for private habitation purposes, the taxable income will be, in the case of buildings, cadastral income as defined above increased by 40 percent and indexed.30 Indexation is a special indexation leading in fact to an increase in taxable income which is higher than inflation.31

For land, taxable income will be the cadastral income. The income of farming properties is also taxable on the basis of the cadastral income.32

There have been discussions as to the desirability of taxing owners of property rented for private use on real income instead of a notional income based on cadastral income. This debate has grown in importance since the recent Sixth Reform of the Belgian State, granting extended tax competences to the Regions,33 all three Regions are at the moment analysing the possibilities in-depth.

If the property is rented not for private use but for professional use or to a corporation, the owner will be taxable on the actual rentals. Indeed, the lessee will deduct the rent as a business expense and the tax authorities will therefore be informed of the exact amount of the rent. There is a taxable minimum, equal to the indexed cadastral income increased by 40 percent for buildings.

The owner will be allowed a lump sum deduction for depreciation and expenses, equal to 40 percent of the rent for buildings and 10 percent for land. However, this deduction may not exceed 2/3 of the cadastral income multiplied by a coefficient34 which is 4.19 for tax year 2014. This rule is aimed at defeating the manoeuvre of a taxpayer who would rent his property at a very high rent to his own or a related company, thereby substituting real property income, enjoying the 40 percent deduction, to a normal salary. An additional specific measure allows the tax administration to requisitify as professional income excessive rentals received by a company director.

The tax base includes not only the rents but also the so-called rental advantages, being the amounts which the lessee bears whereas, under a normal application of the civil law of leases, they should be borne by the lessor, such as important improvements.
If the rented properties are used for both private and professional purposes, the owner will be taxable on the actual rentals, unless a registered rental agreement defines precisely the amount of the rent relating to the private and to professional parts of the building.35

Some lessees will sign a private lease and nevertheless use the property professionally and deduct the rental. It is a good precaution for the lessor to stipulate in the lease that a supplement of income tax due to such action will be borne by the lessee.

Interest on debts specifically incurred to purchase the real property is deductible insofar as it relates to real property which is not professionally used.36 A nonresident may take the deduction.37 The interest is not deductible from other income and it may not be carried over to other tax years. As to real property income, the tax basis can never be negative.

3. If the lessor enters into a real professional activity and has a Belgian establishment, he will be taxable on all actual rentals, whether the property is rented for private use or for professional use, under the normal progressive rates.38 He will deduct depreciation on the building and expenses incurred. He should register as an "entrepreneur" with the Crossroad Bank of Enterprises.

It is worth noting that, as regards rentals, the income cannot be requalified as miscellaneous income because the lessor would go beyond the management of private assets. This requalification does not apply to types of income which are specifically defined by the Code of Income Taxes such as income from real estate or from capital.39 Therefore, if the tax authorities cannot prove a professional activity, the rental income is taxed as such.

3. If FP engages in real estate construction or development activities, he will be in business and be taxed as a professional on business income. If he is engaged in such activities, he will also necessarily be a VAT taxpayer and will have to register as such. If he limits himself to the construction of one building or maybe of a few buildings during a long period of time, he may qualify as an individual staying out of economic activities and may then elect to sell his "new" building under the VAT regime applying to such transactions; the profits from such transactions would be treated as "miscellaneous income" and taxed at 33 percent.

It is a common practice in leases for other than habitation purposes to provide that this tax is borne by the lessee.40

2. Taxation of the nonresident taxpayer

The net income realised by a nonresident individual must be reported and is taxed at the progressive income tax rates, eventually together with professional income realised in Belgium.41 A nonresident who has maintained in Belgium an abode ("foyer d'habitation") or whose Belgian professional income exceeds by 75 percent their total worldwide professional income benefits from some of the personal and family advantages as the resident taxpayer.

C. Real property withholding tax

Under the deceptive name of "real property withholding tax," owners of real property located in Belgium are subject to a tax which has nothing to do with a withholding but is in fact a property tax levied by the Regions, the Provinces and the Municipalities on the indexed cadastral income of all real property. The portion of the tax attributable to the Regions is 1.25 percent in Wallonia and Brussels, 2.5 percent in Flanders. However, Provinces and, especially, Municipalities levy additional centimes on that basis, which very often increase the tax to an amount of 30 or even 50 percent of indexed cadastral income.

For example, if one supposes a cadastral income of EUR 3,000 for a property in the Walloon Region, and a local surcharge of 2,500 additional centimes, the property withholding tax will amount to:

- Region: 3,000 x 1.25 percent = EUR 37.50
- Local surcharge: 25 (= 2,500 / 100) x 37.50 = EUR 937.50
- Total: 37.50 + 937.50 = EUR 975

De facto, there is therefore a domestic double taxation of real property income in Belgium. However, if the lessor is a professional and pays the real property withholding tax himself, he may deduct it as a business expense.

It is not obvious that this tax, as it is levied on a notional income and by the Regions which are subdivisions of the State, would be creditable in the country of residence of the lessor.

D. VAT

Rentals are never subject to VAT. When a lease is registered, it is subject to registration duty at the rate of 0.20 percent on the rentals due for the duration of the lease. If the duration is not specified, the tax is due on ten times the rents and other charges.42 Leases are in principle subject to compulsory registration.43

III. Real estate activity through a corporation

A. Belgian corporation

1. Corporate tax

If FP creates a Belgian corporation in order to purchase and sell or rent real property located in Belgium, the corporation will be subject to tax on all of its income as business income.44 There is no distinction according to whether the property is rented for private or professional use: the lease payments are taxable. All expenses are deductible on a real basis and there is no lump sum deduction for expenses. Unlike private individuals, the corporation is entitled to deduct depreciation on the built property. The land itself cannot be depreciated but it is permitted to deduct for the year of acquisition a decrease in value on the land corresponding to the acquisition costs on certain conditions.

Besides the normal business deductions, a Belgian corporation may deduct a "notional interest" or deduction for capital at risk from its income.45 The general rate has been reduced to 2.8 percent of equity. This deduction has the effect of decreasing the effective tax rate.

Capital gains are taxable at the standard corporate tax rate but the roll-over facility described above is
available for investments in fixed assets. Property which is rented out will qualify as a fixed asset, property which is held as inventory for sale will not.

The standard corporate tax rate is 33.99 percent, subject to the availability of reduced rates for small corporations, the income of which falls below certain levels.

In addition, the real property withholding tax will be due on the cadastral income of any property held by the corporation. It is deductible as business expense.

The company may of course borrow to exercise its activity. Interest will be deductible whereas interest incurred by FP to form the capital of the company would not be deductible in any way in Belgium.

A thin capitalisation rule applies to all companies, treating as dividends interest on advances made by an individual shareholder or a director or related persons to a Belgian company when the interest rate is abnor-

mal or when the total of borrowings from such persons exceeds the total of paid up capital at the end of the tax year and reserved profits at the beginning of the tax year. Some other rules may limit the deduction when the interest is deemed excessive.

2. Transfer of the shares

If for instance FP creates a corporation for each project or each building, he may of course try to realise his gain by selling the shares of a corporation instead of having the corporation sell the property and then liquidate. This capital gain may then fall under various regimes.

If FP manages his private assets, not engaging into any operation or speculation going beyond such management, the capital gain on the shares is generally not taxed.

If he goes beyond private management, for instance by creating the company with borrowed funds and reselling the shares quickly and systematically for various projects, the capital gain will be taxable at 33 percent as miscellaneous income.

Even if he stays within private management but owns, with related persons, more than 25 percent of the shares of a Belgian company and sells those shares to a corporation which is not located in a Member State of the European Economic Area, the gain will be taxable at 16.5 percent.

There is no provision in Belgian tax law enacting a special tax regime for corporations having invested predominantly in Belgian real estate.

3. Dividends

If the company distributes dividends, FP will be subject, but for a reduction by treaty (see V. below), to Belgian withholding tax on the dividend at the rate of 25 percent. The same rate will apply to a liquidation dividend, being the difference between the distributed amount and the paid-up capital of the company.

The qualification of income as a capital gain or as a dividend may be at stake in certain cases. Belgium considers that, when a company is liquidated, the distribution is a dividend. Other countries may consider that this is a capital gain. It is generally accepted that the source State qualification must prevail, what would mean that Belgium may apply its tax treatment as dividends to liquidation distributions and redemptions by a company of its own shares.

B. Foreign corporation

A foreign corporation would be taxable in Belgium on profits realised through a Belgian establishment, as defined above, or, even without such an establishment, on profits from the sale or rental of real property located in Belgium.

According to the Tax Administration, no distinction must be made between corporations which have as their purpose, according to their bye-laws, to engage in real property activities, and corporations having another main activity but merely investing in real property. If the required management is exercised in Belgium, both types of corporations will have a permanent establishment.

The tax regime of foreign companies investing in real estate was thoroughly modified in 1979 to tax real property income and gains of nonresident corporations. Formerly, their real property income was taxed as such and not as business profit. Capital gains were therefore not taxable.

Regardless of whether or not the nonresident corporation has a permanent establishment in Belgium, profits from the rental or disposal of real estate property located in Belgium will be subject to the corporate nonresident income tax at a rate of 33.99 percent (i.e. 33 percent + 3 percent surcharge). As we have noted above, this system is consistent with the OECD Model Tax Convention.

The mere renting out of the property does not entail the existence of a permanent establishment in Belgium; such PE requires an economic activity in Belgium related to the management of the properties. In both cases, charges related with the property are deductible.

The permanent establishment is granted the “notional” deduction of interest on equity computed on the base of the net assets of the establishment, with the effect of reducing the effective tax rate.

Property gains will be taxed by means of a professional withholding tax which can be credited against the tax assessed on the aggregate net income (including the property gains) of the nonresident for the year concerned. The professional withholding tax is levied on the difference between, on the one hand, the consideration received, and on the other hand, the acquisition value of the property less depreciation or write-downs. The tax is withheld by the notary public who will pay the tax to the registration authorities upon registration of the transfer deed.

In principle, no previous losses will be taken into account in determining the amount of such professional withholding tax, nor will any other special exemptions be taken into account, since the professional withholding tax is not the final tax on nonresident corporate income. Indeed, the professional withholding tax is creditable against the final nonresident income tax assessed on the aggregate net income of the nonresident for the year concerned. From this aggregate net income previous losses may be deducted and other special measures can be taken into account.

Moreover, the withholding is refundable if it exceeds the nonresident income tax due.
Finally, in addition to the corporate nonresident income tax, real property withholding tax will also be due but will be deductible as a business expense if the company has a permanent establishment.

However, dividends and capital gains on the shares of the foreign corporation will not enter within the scope of Belgian taxation, contrary to what may happen in several other jurisdictions, such as the United States or France which will tax gains realised on interests in any corporation holding real property in the country.

C. Pass-through entity

When investing through a nonresident pass-through entity without legal personality, no special rules apply. In fact, the tax authorities will look through the entity and each of the members shall be taxed according to his own status (e.g., nonresident individual, nonresident corporation, resident individual, etc.).

Therefore, the rules described above will apply to the members separately, be they individuals or legal persons.

D. Personal use of property held by a company

If FP uses for his personal enjoyment property held by a Belgian company or by a foreign company, he would either have to pay a normal rental or be taxable, if he were a director of the company, on the benefit in kind granted to him. The benefit in kind will be assessed either at 100/60 of the cadastral income of the building multiplied by 3.8 with as a minimum the rental value of the property. Social security may also be due.

If FP is not professionally related to the company and is only a shareholder, the value of the abnormal advantage granted to him by the company would be added to the profits of the company.

IV. Transfer tax

A. Acquisition of the real estate

A transfer tax is due on the price (with as minimal tax base, the market value) of the acquired property at a rate of 12.5 percent (Brussels and Walloon region) or 10 percent (Flemish region).

If the purchaser is a professional who is in the business of purchasing buildings or land in order to resell and who registers in that capacity with the tax administration, the registration duty will be reduced to 5 percent provided he resells within ten years, i.e. December 31 of the tenth year following the date of the purchase deed. Otherwise, the normal duty will become due. The professional purchaser may also elect to pay the difference between the normal duty and the reduced duty at any time.

B. Value added tax or registration tax?

From the point of view of indirect taxes, a distinction must be made between "new buildings" on the one hand and "old buildings" and "land" on the other hand. The sale of new buildings and of land attached to such buildings is subject to value added tax which is levied at the standard Belgian rate of 21 percent.

For VAT purposes, a building is new until December 31 of the second year following the year in which the building was first occupied or taken into possession. The advantage of falling under the VAT regime is that the seller will be able to recuperate the value added taxes which he himself has paid to erect the building. This VAT regime will apply either to VAT subjects, being professional builders engaged into an economic activity, or to private individuals who elect the VAT regime to erect and sell a building.

C. Setting-up of a company

The rate of the registration duty on the contributions made to a company is 0 percent.

However, when the contributed real estate is not fully remunerated with shares, the transfer tax of 12.5 or 10 percent will apply proportionally.

When the property contributed is residential property, the transfer tax applies also.

V. Influence of a treaty between Belgium and the individuals' country of residence or the country of residence of the corporation held by the individual

A treaty will not make much difference as far as the taxation of income or capital gains related to the real property itself are concerned. The Belgian Model Tax Convention (2010), based on the OECD Convention, provides for taxation in Belgium as the State of source of income from real estate property located in Belgium (including income from property owned by enterprises), and of capital gains realised on such property.

Some double tax agreements concluded by Belgium show some peculiarities. As an example, Art. 6.5 of the treaty between Belgium and the United States of November 27, 2006 provides for the option allowing the taxpayer to elect taxation on a net basis as if he were engaged in business and the real property rentals were attributed to a permanent establishment. We see no reason why this provision could not be applied in Belgium as it is in the United States, but the Belgian tax administration apparently does not share that opinion and considers that the only deductible expenses will be interest related to the acquisition of the real property in Belgium and, in the case of a business, depreciation and other costs relating exclusively to the business profits taxable in Belgium. This conclusion is drawn from the explanatory memorandum to the law of approbation of the treaty stating: "As far as it concerns Belgium, the taxation of nonresidents is always determined on a net basis in accordance with the articles 232 until 235bis of the Belgian Income Tax Code."

The taxation of capital gains on real estate is attributed to Belgium by article 13. The various systems of Belgian taxation of such gains may therefore also apply.

If a corporation is used, the treaty will make a difference.

First, the withholding tax on dividends will normally be reduced (to 15 percent of dividend according to the treaty with the USA). Second, capital gains realised on shares are taxable only in the state of residence of FP.
As to the Belgium / US tax treaty, it assimilates United States real property interests to real property but only in respect of the United States, without any extension to Belgium. The various regimes under which Belgian law taxes capital gains on shares of a Belgian company will therefore be excluded by the treaty if FP is a resident of the treaty partner, in our example of the United States.

NOTES
1 See, for example, decisions cited in Tiberghien, Manuel de Droit fiscal, 2012-2013, 301 ; P.F. Coppens, La fiscalité immobilière en questions, Edipro, 2009, 217.
3 Translated from Latin: « bonus pater familias ».
4 CIT, art. 90, 8°, a) and 171, 1°, b) and 171, 4°, d) similarly made applicable to nonresident individuals by CIT, art. 228, § 2, 9°.
5 We make abstraction of certain exceptions such as the non-taxation of property gains realised as a result of an expropriation by the Belgian State (art. 93bis, ICT).
6 CIT, art. 101, § 1. The text of this Article precludes the possibility to base this calculation on a consideration that is below the market value of the good as it is determined by the Registration Duties authorities or VAT authorities.
7 Code of Income Taxes, hereafter CIT, art. 90, 10°, a) and 171, 4°, d), made applicable to nonresident individuals by CIT, art. 228, § 2, 9°.
8 We make abstraction of certain exceptions such as the non-taxation of property gains realised as a result of an expropriation by the Belgian State (art. 93bis, ICT).
9 CIT, art. 90, 1°, similarly made applicable to nonresident individuals by art. 228, § 2, 9°.
13 CIT, art. 103.
16 CIT, art. 171, 4°, a) made applicable to nonresidents by art. 228, § 2, 3°.
18 CIT, art. 171, 4°, a) for the reduced tax rate and 47 for the roll-over ; M. De Wolf, J. Thulmany and J. Malherbe, Impôt des personnes physiques, Brussels, Larcier, 2013, 187-192.
19 CIT, art. 229, § 1.
20 CIT, art. 228, § 2, 3°.
21 P. Hinekens, Belasting van niet-inwoners, Kalmthout, Biblo, 1994, 66.
23 CIT, art. 304, § 2.
24 Art. 273 CIT.
25 Art. 270, 5° CIT. More largely, the obligation to pay the capital gain tax lies on any person who has the obligation to register the transfer deed according to Art. 35 Reg. Duties Code.
26 RD/CIT, art. 177.
27 CIT, art. 270, 5°, 272, para. 2, 273, 2°; RD/CIT, art. 87, 5°, a and 87, 8°. Without deduction of expenses.
29 CIT, art. 248, § 1.
30 CIT, art. 7, § 1, 2°.
32 CIT, art. 8.
33 CIT, art. 14.
34 CIT, art. 235, 1°.
35 CIT, art. 228, § 1, 3° and 232, al. 1, 2°.
37 It must be paid by the owner of the property.
38 CIT, art. 228, § 2, 1° and 232, al. 1, 1°.
39 CRD, art. 83 and 84.
40 CRD, art. 19, 3°.
42 CIT, art. 205bis to 205octies.
43 CIT, art. 18, al. 1, 4°.
44 See CIT, art. 54, 55, and 198, 11°.
45 It is generally considered that, for registration tax purpuses, the anti-abuse provision of art. 18, (2 CRD could not be used to requital the sale of shares as a share of the building owned by the corporation, thereby subjecting it
to the 12.5 or 10 % registration tax (T. Blockeeye, P.O. van Caubergh and J.P. Nemy de Belleval, Les opérations de démembrement de la pleine propriété et les cessions de parts de sociétés immobilières face aux nouvelles dispositions générales anti-abus, inLa réforme fiscale 2012, Limal, Anhemis, 2012, 218).

49 CIT, art. 90, 9a, made applicable to nonresidents by art. 228, § 2, 9a, h).


51 CIT, art. 228, § 2, 3a, particularly 3a. a).


54 Art. 228, § 2, 3a, a). CIT.

55 Art. 246, 1a jo., 215 CIT and 463bis. Note however that nonresident corporations are also eligible for the reduced corporate income tax rates.

56 RD-CIT, art. 67, 8a; Annex 3 to RD-CIT, art. 5.27; the rate is 33.99 %.

57 J.F. Couturier. "Onroerende meeuwenden verwezenlijkt door niet-inwoners", A.F.T., 2004, nr. 8-9 (3), 4. Contra: certain authors note that the professional withholding tax can only be levied when the capital gains are realised in the absence of a permanent establishment; P. Faes, Buitenlandse vennootschappen en onroerende goederen in België; over Belgische inrichtingen en de dubbelzinnigheid van winst, T.F.R., 2005, nr. 273, 303, and P. Hinnekens, Belasting van niet-inwoners; Kalmthout, Biblo, 1994, 67-68. These authors also note that it is only if a permanent establishment is present that the tax authorities will accept the allocation of a part of the general expenses of the nonresident corporation to the profits of the establishment which lowers the Belgian taxable base. This allocation is not accepted in the absence of a permanent establishment.

58 Commentary of the CIR, nr. 275/1974.

59 Art. 270, 5a. This obligation stands regardless of any derogatory provisions stipulated by the parties in the transfer deed.

60 CIT, art. 272, al. 2.

61 CIT, art. 210bis.

62 CIT, art. 235, 2a.

63 Royal Decree of Implementation of the Code of Income Taxes, hereafter RD-IT, art. 18, § 3.2.

64 C.I.T., art. 26

65 RDC, art. 44.

66 CRD, art. 62, 63 and 64.

67 CRD, art. 65.

68 Code of Value Added Tax, hereafter CVAT, art. 8bis.

69 CVAT, art. 8, § 1.

70 Art. 6 and 13 of the Model Convention.


72 Treaty, art. 10, 2, a).

73 Treaty, art. 13, 4 of the Belgian Model Convention; art. 13.6 of the US/Belgium DTA.

74 Treaty, art. 13, 2, b).