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## *Commission v. Belgium: Belgium's Tax Law Prevents Free Movement of Capital*

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## *Commission v. Belgium: Belgium's Tax Law Prevents Free Movement of Capital*

JOHN GRAMLICH\*

### I. Introduction

In *Commission v. Belgium*, the Court of Justice of the European Union (CJEU) held that Article 7 of Wetboek van de inkomstenbelastingen 1992 [Income Tax Code] (ITC '92) of Belgium is in violation of both the European Union law under Article 63 Treaty on the Functioning of the European Union (TFEU) and Article 40 of the Agreement on the European Economic Area of 2 May 1992 (the EEA Agreement).<sup>1</sup> Income Tax under Article 7 varies depending on whether property is held within Belgium or outside of Belgium, which contradicts the requirements of both the TFEU and the EEA Agreement.<sup>2</sup> The Court found that Belgium is restricting the “free movement of capital” in direct conflict with Article 63 TFEU and Article 40 of the EEA.<sup>3</sup> This restriction on the free movement of capital is discouraging Belgian residents from investing in property residing in other Member States within the European Union because there can be higher tax consequences for investing money in property abroad rather than in Belgium.<sup>4</sup> The Court further found that Belgium must pay the court costs to the Commission in accordance with Article 138(1) of the Rules of Procedure of the Court of Justice.<sup>5</sup>

In this case, on “7 November 2007, the Commission pointed out that Belgian tax provisions on income from immovable property located abroad might be incompatible with the obligations arising from Article 63 TFEU and Article 40 of the EEA Agreement.”<sup>6</sup> That incompatibility was found when the Commission observed different procedures for calculating taxable income on “property located in Belgium versus property located [outside of Belgium.]”<sup>7</sup> The ITC '92 requires that a Belgian resident's tax base for property located in Belgium is calculated on the basis of the cadastral value, while the tax base from property located outside of Belgium is calculated on

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1. See Case C-110/17, *Belgium v. Comm'n*, 2018 E.C.R. 250.

2. See *id.* ¶ 65.

3. See *id.* ¶¶ 55, 63.

4. See *id.* ¶¶ 23, 53.

5. See *id.* ¶ 66.

6. See *id.* ¶ 12.

7. Linda Thompson, “Belgian Residents With Rental Property in Tax Limbo,” *BLOOMBERG L. DAILY TAX REP.: INT'L* (Aug. 28, 2018).

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the revenue generated from renting that property, or “rental value.”<sup>8</sup> The cadastral value was established in 1975 from an “estimate of the net normal rental value” and has been increased each year since 1991 “according to the consumer price index.”<sup>9</sup> The Commission concluded that Belgian residents with income from property arising outside of the state were “treated disadvantageously in comparison with income relating to immovable property located in Belgium.”<sup>10</sup> Belgium responded to the Commission by rejecting the claims that persons with income from property located abroad were treated disadvantageously.<sup>11</sup> In March of 2012, the Commission issued a “reasoned opinion” that stated its prior findings.<sup>12</sup> In response, “Belgium indicated that it accepted the Commission’s position and [began] to prepare draft legislation . . . to rectify the infringement.”<sup>13</sup> But the Commission suspended the infringement proceedings because, on September 11, 2013, the lower court ruled that:

Article 63 TFEU [must] be interpreted as precluding legislation of a Member State on the taxation of income of residents of that State[, such as that at issue in the main proceedings,] in so far as it is liable to lead, when a progressivity clause contained in a convention for the prevention of double taxation is applied, to a higher rate of tax on income merely because the method for determining income from immovable property results in income deriving from immovable property that is not rented out situated in another Member State being assessed at a higher amount than income from such property situated in the first Member State.<sup>14</sup>

It is for the referring court to ascertain whether that is in fact the effect of the legislation at issue in the dispute in the main proceedings.<sup>15</sup> In response, Belgium argues that the two methods of determining income complies with Article 63 TFEU and Article 40 of the EEA agreement because freedom of capital movement is still guaranteed.<sup>16</sup> Therefore, the question of whether the two different methods of determining tax rates actually results in higher tax consequences for income derived from property located abroad is for the CJEU to determine.<sup>17</sup>

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8. Case C-110/17, *Comm’n v. Belgium*, ¶ 3.

9. *Belgian Tax Treatment of Foreign Real Estate Incompatible with EU Law*, TAXPATRIA (2018), <https://www.taxpatria.be/belgian-tax-treatment-of-foreign-real-estate-incompatible-with-eu-law/>.

10. Case C-110/17, *Comm’n v. Belgium*, ¶ 12.

11. *Id.*

12. *Id.* ¶14.

13. *Id.*

14. *Id.* ¶ 16.

15. *Id.* ¶ 30.

16. *Id.* ¶¶ 26-30.

17. *Id.*

## II. Legal Background: Free Movement of Capital

The European Union was initially established “to stabilize political and economical issues and to unify the law of diversified states and established four freedoms: free movement of capital, free movement of services, free movement of people and free movement of goods.”<sup>18</sup> As the European Union has grown and expanded, freedom of capital has become an “essential element for the proper functioning of the large European internal market.”<sup>19</sup> The 1988 Directive 88/361 and EEA Agreement were established to ensure “the full liberalization of capital movements.”<sup>20</sup> Today, the European Union has gone even further than the power under the directive by expressly establishing the free movement of capital in Article 63 TFEU, which prohibits “all restrictions on the movement of capital between Member States and between Member States and third countries.”<sup>21</sup> This was a large step in ensuring the free movement of capital because articles within Treaties are directly effective throughout the Member States.<sup>22</sup> If a piece of legislation is directly effective, that means “it does not need any implementing legislation at member states’ level and it directly confers rights on individuals which they can rely on before national courts.”<sup>23</sup> But the European Union does establish “temporary safeguard measures to be taken” in Articles 65 and 66 TFEU if a country can show “serious difficulties for the operation of economic and monetary union,” or to prevent violation of national law particularly regarding taxation.<sup>24</sup> Article 65(1) allows for different tax treatment of Member State residents and foreign investment, but it cannot be a means of arbitrary discrimination.<sup>25</sup> Article 65(1)(a) “must be interpreted strictly” and cannot “be interpreted as meaning that all tax legislation which draws a distinction between taxpayers based on . . . the State in which they invest their capital is automatically compatible with the Treaty.”<sup>26</sup> Recently, the CJEU narrowed Article 63 slightly by stating there are special capital movement provisions when free capital movement relates

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18. Cansu Korkmaz, *Free Movement of Good in European Union Member States*, (Jan. 14, 2009) (unpublished manuscript, Kadir Has University) (on file with author), [http://www.academia.edu/2583771/Free\\_Movement\\_of\\_Goods\\_in\\_European\\_Union](http://www.academia.edu/2583771/Free_Movement_of_Goods_in_European_Union).

19. NICHOLAS MOUSSIS, *6.7 Free Movement of Capital in the EU*, in *ACCESS TO EUROPEAN UNION: LAW, ECONOMICS, POLICIES*. (19th ed. 2011), [http://europedia.moussis.eu/books/Book\\_2/](http://europedia.moussis.eu/books/Book_2/).

20. *Id.*

21. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, art. 63, Dec. 13, 2007, 2007 O.J. (C 306) [hereinafter Treaty of Lisbon]; *see also* Case C-197/11 and Case C-203/11, *Libert and Others*, 2013 E.C.R. 288, ¶ 93.

22. Case C-101/05, *Skatteverket v. A*, 2007 E.C.R. I-11531, ¶¶ 21-22.

23. *Legal Basis for the free movement of capital*, EUR. COMM’N (2016), [https://ec.europa.eu/info/system/files/legal-basis-free-movement-capital-20122016\\_en.pdf](https://ec.europa.eu/info/system/files/legal-basis-free-movement-capital-20122016_en.pdf).

24. MOUSSIS, *supra* note 19.

25. The Treaty of Lisbon, *supra* note 21, art. 65(1).

26. Case C-489/13, *Verest and Gerards*, 2014 E.C.R. 2210, ¶ 55.

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to “British, Danish, Dutch and French Overseas Countries and Territories.”<sup>27</sup>

In *Verest and Gerards*, two Belgium residents appealed the dismissal of their prior action against the Court of First Instance, Antwerp, about adjustments that Belgian tax authorities made to their tax declaration in 2005 regarding tax consequences to their property located in France.<sup>28</sup> As noted by the court, “Member States retain competence for determining the criteria for taxation on income and capital with a view to eliminating double taxation.”<sup>29</sup> That competence retained by the Member States is known as fiscal jurisdiction.<sup>30</sup> However, “fiscal jurisdiction does not allow Member States to apply measures contrary to the freedoms of movement guaranteed by the FEU Treaty.”<sup>31</sup> Therefore, Member States have the freedom to lay down their taxation methods against their residents so long as the taxation method does not infringe on the binding laws of the Treaty.<sup>32</sup>

The CJEU further established in *Commission v. Greece* “the existence of a restriction on the free movement of capital within the meaning of Article 63 TFEU . . . [to] be transposed *mutatis mutandis* to Article 40 of the EEA Agreement.”<sup>33</sup> In other words, when the CJEU is confronted with a case involving the question of free movement of capital, the court recognizes Article 63 TFEU and Article 40 of the EEA Agreement to act as binding law.<sup>34</sup> Therefore, in cases where the court decides a country did not fulfill its obligations under Article 63 TFEU, the court will also decide that the country did not fulfill its obligations under Article 40 of the EEA Agreement.

There are situations where the European Union will allow a Member State to infringe on the free movement of capital protections provided by Article 63 TFEU and Article 40 of the EEA Agreement, but it is uncommon for an exception to be granted.<sup>35</sup> The Court of Justice considers “[t]he free movement of capital [to be] a fundamental principle of the Treaty [of Lisbon]” that can only be overridden by national legislation which (1) justifies “public-interest grounds,” and (2) does “not go beyond what is necessary in order to attain it, so as to accord with the principle of

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27. Wessel Geursen, *Overseas Tax Holiday to Dutch Caribbean Under the Free Movement of Capital Spoiled by CJEU in TBG Limited-Case*, EUR. L. BLOG (Jul. 17, 2014), <http://europeanlawblog.eu/tag/free-movement-of-capital-2/>.

28. Case C-489/13, *Verest and Gerards*, ¶¶ 8-10.

29. *Id.* ¶ 18 (citing Case C-303/12, *Imfeld and Garcet*, 2013 E.C.R. 822, ¶ 41).

30. Case C-489/13, *Verest and Gerards*, ¶ 18.

31. *Id.*

32. *Id.* ¶ 20.

33. Case C-98/16, *Comm’n v. Greece*, 2017 E.C.R. 346, ¶ 63.

34. Case C-589/14, *Comm’n v. Belgium*, 2015 E.C.R. 736, ¶ 49.

35. Jarrod Tudor, *The Free Movement of Capital in Europe: Is the European Court of Justice Living up to its Framers’ Intent and Setting an Example for the World?* 25 (Apr. 4, 2015) (unpublished manuscript, Kent State University) (on file with author), [https://works.bepress.com/jarrod\\_tudor/3/University](https://works.bepress.com/jarrod_tudor/3/University).

proportionality.”<sup>36</sup> Under Article 63 TFEU, case law has established that a country may prove that legislation is in the country’s best public interest regardless of conflicts with European Union law by putting forth sufficient evidence.<sup>37</sup> But in *Commission v. Belgium*, Belgium did not provide enough evidence to prove such interest.<sup>38</sup> Therefore, the court correctly held there is no overriding public-interest justification to treat income derived from property abroad differently than income derived from property at home.<sup>39</sup>

Case law establishes that Member States rarely are awarded the ability to infringe on European Union law by restricting free movement of capital for public-interest reasons.<sup>40</sup> Belgium must present sufficient evidence of an “overriding reason . . . [to] justify the restriction on the free movement of capital within the meaning of Article 63 TFEU” to prove a public-interest exception applies.<sup>41</sup> The fact that Belgium did not purport any argument about lower tax consequences on owners of property located in Belgium versus property located abroad establishes that there was not any overriding public-interest reason to conflict with Article 63 TFEU.<sup>42</sup> Providing lower tax rates for some Belgium residents is not an overriding public-interest justification to restrict the free movement of capital, so the country was not permitted to discourage Belgium residents from investing in property outside of the country.<sup>43</sup>

### III. Application by the Court: The Two Different Methods

In order to understand the reasoning and holding from the CJEU in *Commission v. Belgium*, it is imperative to understand the two different methods Belgium uses for assessing income from property abroad and income from property at home. For the former, the ITC '92 indicates the value is determined by the actual rental value from revenue.<sup>44</sup> Conversely, for income from property in Belgium, the ITC '92 determines the tax consequences on the basis of cadastral value.<sup>45</sup> Therefore, under the ITC '92, Belgium assesses tax consequences from property located abroad and property located at home by two different methods.<sup>46</sup> But, the real question is: do the two different methods result in a restriction or discouragement of capital movement?

Comparable properties can be assessed different tax consequences by the two methods because each method determines potential rental value

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36. Case C-174/04, *Comm’n v. Italy*, 2005 E.C.R. I-04933, ¶ 32.

37. Case C-190/12, *Emerging Mkts.’ Series of DFA Inv. Trust Co.*, 2014 E.C.R. 249, ¶ 45.

38. Case C-110/17, *Comm’n v. Belgium*, 2018 E.C.R. 250, ¶ 62.

39. *Id.*

40. Tudor, *supra* note 35, at 53.

41. *Id.*

42. *Id.*

43. Case C-244/15, *Comm’n v. Hellenic*, 2016 E.C.R. 359, ¶ 43.

44. *Wetboek van de inkomstenbelastingen* [Income Tax Code], § 7(a) (1992).

45. *Id.*

46. *Id.*

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differently.<sup>47</sup> For property located in Belgium, a flat rate is applied based on that property's cadastral value, which in 1975 was determined by "an estimate of the net normal rental value."<sup>48</sup> That estimate, since 1991, has been adjusted each year to account for increases in consumer price index.<sup>49</sup> Differently, the actual rental value, used to determine tax consequences for income derived from property abroad, is represented by "the annual average gross rent which, should that property be rented, could have been collected."<sup>50</sup> Comparing the two methods, "Belgium does not dispute that the cadastral value of immovable property situated in Belgium is lower than the actual rent of that property or its actual rental value."<sup>51</sup> In other words, property abroad is being assessed at a fair market value, while property in Belgium is not. This method of assessment may discourage investments in other Member States, which is one of the main activities the EU aimed to prevent when Article 63 TFEU was enacted.<sup>52</sup> Therefore, there is no denying that the two methods of assessing property can determine different values of comparable properties.

But, this does not fully show the two different methods restrict the free movement of capital; even though there is a gap between cadastral value and actual rental value in the *Commission v. Belgium* case, that "does not necessarily mean that the income from immovable property situated in a state other than the Kingdom of Belgium is higher than the cadastral value of comparable immovable property on Belgian territory" in the majority of circumstances.<sup>53</sup> In other words, the court goes through an extra step of analysis because it must be shown on a consistent basis that the cadastral value method is lower than the actual rental value method, and not just in this one case.<sup>54</sup> This broader view of the two different methods restricting the free movement of capital ensures the holding in *Commission v. Belgium* is much more effective. Because the court considers the case on restricting the free movement of capital to any Member States, and not just the Member State relevant in the case, the court ensures a broader, stronger precedent. Belgium cannot successfully argue in a future case where the value of property located in Belgium based on the cadastral value is higher than property located outside of Belgium based on actual rental value, because the court has already shown that cadastral value overall undervalues property, and thus is restricting the free movement of capital if Belgium uses actual rental value to assess property located outside of Belgium under this precedent.<sup>55</sup> The court verifies that the two different methods conflict with

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47. Case C-110/17, *Comm'n v. Belgium*, 2018 E.C.R. 250, ¶ 45.

48. *Id.* ¶ 42.

49. *Belgian Tax Treatment of Foreign Real Estate Incompatible with EU Law*, *supra* note 9.

50. Case C-110/17, *Commission v. Belgium*, ¶ 44.

51. *Id.* ¶ 45.

52. Korkmaz, *supra* note 18.

53. Case C-110/17, *Commission v. Belgium*, ¶ 46.

54. *Id.*

55. *Id.* ¶ 49.

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European Union treaty law and thus must be amended to accord with existing law.<sup>56</sup>

In order to confirm Belgium did not fulfill its obligations under Article 63 TFEU and Article 40 of the EEA Agreement, the European Commission must prove there was some restriction on the movement of capital or property located outside of Belgium, including discouragement of capital investments outside of the country.<sup>57</sup> But it should be noted that if the court is considering “situations which are not objectively comparable” the court cannot show any restrictions.<sup>58</sup> Properties and their values are objectively comparable even if the properties are located in different countries. Because of this objective comparability of property values regardless of location, the European Commission was able to show that the value of a property located outside of Belgium was valued at a price that made tax consequences higher compared to a similar property located in Belgium, resulting in tax consequences that act as restrictions from purchasing property abroad compared to purchasing property at home in Belgium.<sup>59</sup> Even Belgium admits that the cadastral value is historically lower than the fair market value, which results in cadastral value of property in Belgium to be valued lower than the rent that could be obtained from the rental market.<sup>60</sup> Therefore, though in some small circumstances the actual rental value determined from property abroad could be less than the cadastral value, most often the property abroad is going to be valued higher.<sup>61</sup> The court simply stated property outside of Belgium “is overvalued in relation to income from immovable property situated in Belgium.”<sup>62</sup>

The court properly held Belgium tax code, specifically Article 7 of the ITC '92, was incompatible with binding European Union treaty law under Article 63 TFEU and Article 40 of the EEA Agreement, because the tax code discourages Belgian residents from purchasing property located outside of the country. Also, it is important to note that Belgium concedes many important points; one being that cadastral value—the method of valuing property inside the borders of Belgium—is historically low.<sup>63</sup> There are many political reasons the elected officials in Belgium want to keep value of property inside their country low and thereby allowing Belgium residents pay lower taxes; but if the country is going to do so, they must not restrict capital movement by valuing property located outside of Belgium higher.<sup>64</sup> To be clear, what violates European Union law is the disadvantageous tax treatment that property outside of Belgium incurs compared to property

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56. *Id.*

57. *Id.* ¶ 40.

58. Case C-190/12, *Emerging Mkts.’ Series of DFA Inv. Trust Co.*, 2014 E.C.R. 249, ¶ 31.

59. Case C-110/17, *Commission v. Belgium*, ¶ 49.

60. *Id.* ¶ 45.

61. *Id.* ¶ 49.

62. *Id.*

63. *Id.* ¶ 45.

64. *Belgian Tax Treatment of Foreign Real Estate Incompatible with EU Law*, *supra* note 9.



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located in Belgium, not the manner in which Belgium values the property in Belgium.<sup>65</sup> Therefore, it would be compatible with European Union law if Belgium valued both property in Belgium and property outside of the country by its cadastral value. So long as Belgium is consistent with the tax consequences on property within and outside of the country, the code will not conflict with free movement of capital because there will be no restriction or discouragement to Belgium residents to invest in property located outside of the country.<sup>66</sup>

Although implications of *Commission v. Belgium* may be limited to wealthier individuals who have the means of investing in property outside of Belgium, depending on how Belgian elected officials correct the tax code, the results could affect many Belgium residents. Jan Lambrechts, an European Union Specialist on Capital, fears that Belgium will continue to “trend for radical tax increases” in the near future because of the incompatibility of Belgium’s tax code with European Union treaty law.<sup>67</sup> Belgium, like so many countries, taxes individuals on a progressive tax scale.<sup>68</sup> Because the country already believes individuals with greater means of paying taxes should pay higher taxes, property outside of Belgium in “secondary homes,” or investment properties, will most likely be “deemed to be excessive signs of welfare” and could thus be at risk of a tax increase in the future.<sup>69</sup> Further, some believe that “a sudden tax increase on real estate could result [in] public unrest.”<sup>70</sup> It will be interesting to see how the Belgian government corrects the tax code and how Belgium residents respond to the change.

This holding is important because it sets further precedent that the European Union will ensure countries are not restricting the free movement of capital even if the monetary effect is minimal. Remembering why the European Union was formed in the first place emphasizes why this ruling against even a small restriction on the free movement of capital is important. As referenced earlier, one of the major reasons the European Union was formed was to ensure that there were no restrictions on the free movement of capital between European Union Member States.<sup>71</sup> The free movement

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65. Case C-489/13, Verest and Gerards, 2014 E.C.R. 2210, ¶¶ 18-19.

66. *Id.* ¶ 18.

67. Jan Lambrechts, *Owning Properties Abroad – New Tax Changes Upcoming*, ICHIBAN CONSULT BLOG (Dec. 4, 2013), <http://ichibanconsult.be/blog/owning-properties-abroad-new-tax-changes-upcoming/>.

68. *Belgium – Income Tax, Taxation of International Executives*, KPMG (Dec. 31, 2017), <https://home.kpmg.com/xx/en/home/insights/2011/12/belgium-income-tax.html> (“Income tax is calculated by applying a progressive tax rate schedule to taxable income.”); see generally *Progressive Tax*, INVESTOPEDIA, <https://www.investopedia.com/terms/p/progressivetax.asp> (last visited Nov. 12, 2018) (“A progressive tax is a tax that imposes a lower tax rate on low-income earners compared to those with a higher income, making it based on the taxpayer’s ability to pay.”).

69. Lambrechts, *supra* note 67.

70. *Belgian Tax Treatment of Foreign Real Estate Incompatible with EU Law*, *supra* note 9.

71. Korkmaz, *supra* note 18.

of capital “enables, integrated, open, competitive and efficient European financial markets and services.”<sup>72</sup> But, before the 1988 Directive 88/361<sup>73</sup> and EEA Agreement, and later the Article 63 TFEU, there was no free movement of capital. Since the legally binding assertion of free movement of capital, there has been a transition period for many Member States.<sup>74</sup> Transition periods can be significant, as demonstrated by the holding in *Commission v. Belgium*. Article 7 of the ITC '92 was formed over twenty-six years ago. That is a long transition period for Belgium to adopt tax laws that follow binding European Union law.

#### **IV. Conclusion: The Future of Belgium Property Tax Law**

Now that Article 7 of the ITC '92 has been proven to conflict with European Union law under Article 63 TFEU and Article 40 of the EEA Agreement, the question for taxpayers in Belgium is: how do I file a correct tax return if I own property outside of the country? According to Jan Torsin, senior manager of tax at the Van Havermaet advisory firm in Belgium, “things are very unclear at the moment; you have no legal certainty.”<sup>75</sup> In the meantime, practitioners are advising Belgium residents with property located abroad to be aware of the method by which the property is valued.<sup>76</sup> Some individuals will use the holding in European *Commission v. Belgium* to lower the value of their property located abroad, but according to tax advisors in Belgium that may be risky.<sup>77</sup> Kizzy Wandelaer, tax director at KPMG Tax Advisers stated that if residents lower their abroad property assessment they “will be looking at a court battle because . . . the tax administration will contest this.”<sup>78</sup>

In response to the holding in *Commission v. Belgium*, the Finance Ministry has publicly stated that they would change the tax law to address the conflict with Article 63 TFEU and Article 40 of the EEA Agreement.<sup>79</sup> If Belgium continues to delay changing the “unequal treatment” of tax consequences on property located in Belgium versus property located outside of Belgium, the country could face penalties from the European Union.<sup>80</sup> Interestingly, Belgian Finance Minister, Johan Van Overtveldt, suggested Belgium would change the way property abroad is valued, “rather than amending the cadastral value method, which would increase tax bills.”<sup>81</sup> Belgium is already a very highly taxed country with a total tax rate in 2016 of 53.7%, “the

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72. *Free Movement of Capital in the EU*, EUBUSINESS (Aug. 1, 2009), <https://www.eubusiness.com/topics/single-market/capital>.

73. See generally Council Directive 88/361, 1988 O.J. (L 178) 1 (EU).

74. *Free Movement of Capital in the EU*, *supra* note 73.

75. Thompson, *supra* note 7 (internal citations omitted).

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Belgian Tax Treatment of Foreign Real Estate Incompatible with EU Law*, *supra* note 9.

81. Thompson, *supra* note 7.

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highest tax rate in Western Europe.”<sup>82</sup> With an already high tax rate on its citizens, the Finance Ministry’s objective to avoid raising taxes seems logical. But, it is unlikely that there will be an update to the tax code before general elections are held in May 2019.<sup>83</sup> Therefore, the impact of *Commission v. Belgium* will put taxpayers in limbo because individuals will not know how to access the value or rental value of their property located outside of Belgium.<sup>84</sup>

It is important to limit *Commission v. Belgium* to its facts: here the court is specifically discussing the tax consequences associated with the value of the property. The valuation is the problem and what conflicts with European Union Treaty law, whether the property is rented out for income or not.<sup>85</sup> The differing valuation between property located in Belgium and property located outside of Belgium by the two different methods used is the focus of the court’s ruling. While the court makes clear in *Commission v. Belgium* that Article 7 of the ITC ’92 conflicts with European Union Treaty law and must be addressed, this case does not directly resolve the problem of tax valuation of property outside of Belgium.

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82. Andrew Henderson, *15 Countries with the Highest Tax Rates in the World*, NOMAD CAPITALIST, <http://nomadcapitalist.com/2017/08/07/countries-with-the-highest-tax/> (last visited Nov. 12, 2018).

83. Thompson, *supra* note 7.

84. *Id.*

85. Case C-110/17, *Commission v. Belgium*, 2018 E.C.R. 250, ¶¶ 18-19.