

Law concerning the 'Diamond Regime' (coordinated text)

In this regard, reference can be made to the Program Law d.d. August 10, 2015 (*Belgian State Gazette* d.d. August 18, 2015) as well as the Program Law d.d. December 18, 2016 (*Belgian State Gazette* d.d. December 20, 2016).

Art. 67

With regard to the scope of application of this chapter the following is understood as:

1° **registered diamond trader**: the natural person, legal entity or Belgian establishment that exercises a commercial activity as described in article 1, 4°, of the Royal Decree d.d. April 30, 2004 concerning measures with regard to the supervision of the diamond industry, who is registered with the Federal Department of Economy, S.M.E, Small Businesses and Energy in accordance with article 169, § 3, of the Program Law d.d. August 2, 2002;

2° **diamond**: loose and polished diamond, rough diamond, industrial diamond, boart, synthetic diamond, diamond powder, insofar as these are not intended exclusively for own use (commodity codes 7102 1000, 7102 2100, 7102 2900, 7102 3100, 7102 3900, 7104 2000, 7104 9000, 7105 1000);

3° **diamond trade**: the purchase and sale of diamonds by a registered diamond trader, potentially after they have been processed;

4° **turnover resulting from diamond trade**: the turnover as defined in article 96, I.A, 1st paragraph, of the Royal Decree d.d. January 30, 2001 implementing the Belgian Companies Code, insofar as it is effectively connected to the diamond trade, or as regards the personal income tax regime, evidenced by the accumulation of the total sales price of all invoices of the corresponding taxable period concerning diamond sales transaction.

5° **Cost of diamonds sold**: all costs effectively connected to the diamond trade, as defined in article 96, II, A, 1st paragraph of the Royal Decree d.d. January 30, 2001 implementing the Belgian Companies Code and, as regards the personal income tax regime, all costs evidenced by the accumulation of the underlying purchase invoices of diamonds, albeit adjusted with increases / decreases in the diamond inventory / stock.

Art. 68.

§ 1. Subject to the deviations as explicitly described in this chapter, the provisions of the Belgian Income Tax Code 1992 are applicable to registered diamond traders.

With regard to registered diamond traders, the **taxable result of the diamond trade** is calculated, as far as the diamond trade turnover is concerned, by way of deviation from the articles 23, § 2, 1°, 183 and 235 of the Belgian Income Tax Code 1992, by taking into account the **cost of diamonds sold which is replaced by a tax fiction, i.e. a lump sum amount calculated as a fixed percentage on turnover**.

The regime that determines the taxable result for the diamond trade (on the basis of a tax fiction, thus, effectively replacing the cost of diamonds sold as recorded in the financial accounts) is called the '**Diamond Regime**'.

§ 2. With regard to the registered diamond trader who trades in rough diamonds that originate from the **own exploitation of a diamond mine or own extraction of alluvial diamonds**, or who, as an affiliated company as defined in article 11 of the Belgian Companies Code is part of a group of companies in which the exploitation of a diamond mine or the extraction of alluvial diamonds is situated and that intervenes in the bringing to market of these diamonds through diamond sales in its own name, the Diamond Regime is applicable to these sales of diamond, self-extracted or within the group of companies, only if the registered diamond trader has opted for this regime upon the moment of filing his income tax return.

The aforesaid deliberate choice holds effect for a fixed term of three consecutive tax years.

Art. 69

If the registered diamond trader derives income stemming from **activities or assets other than through diamond trade that are not being subject to the Diamond Regime**, the registered diamond trader is obliged to hold a **separate set of accounts** with regard to all these other activities, in such a way that the total amount of turnover realized from diamond trade can be clearly substantiated and that simultaneously facilitates a correct allocation of costs specifically connected to these other activities.

Art. 70

§ 1. The application of the Diamond Regime implies for the registered diamond trader that the **taxable result derived from the diamond trade is being calculated by fixing the cost of diamonds sold at 97.9% of the turnover realized from diamond trade only for income tax purposes**.

§ 2. Notwithstanding article 49 of the Belgian Income Tax Code 1992, the **following business expenses are treated as non-deductible expenses** within the application of the Diamond Regime:

1° depreciations of diamond stock as mentioned in category II. E of the Belgian GAAP profit & loss accounts;

2° insofar these (expenses) are directly linked with the processing of rough diamonds into cut diamond that are owned by the diamond trader who processes these rough diamonds himself or who outsources the processing activities:

- Salaries paid in connection with cutting and polishing of diamonds;
- Salaries paid in connection with cleaving and bruting of diamonds;
- Salaries paid in connection with sawing of diamonds;
- Costs of purchased chemicals;
- Costs related to the cutting and polishing equipment;
- Costs for renting of diamond mills;
- Depreciations of diamond processing machinery;
- Interest expenses incurred on loans specifically concluded to finance diamond processing machinery;
- Gross salaries paid to diamond workers (except for salaries paid to workers specialized in sorting of diamonds); and
- Costs incurred by diamond owners for processing by third parties of purchased rough diamonds into polished diamonds.

If a diamond manufacturer performs its activities for third parties on the one hand (for which he will be taxed on the actual net income realized for these type of services) and at the same time processes and trades rough diamonds on its own behalf, he will be obliged to make a split-up between its processing costs for each of both divisions depending on the actual professional activities performed, determined by the number of carats produced from polished diamonds.

§ 3. If the turnover is expressed in a currency other than the euro, the turnover will be determined through the average exchange rate for the taxable period with regard to the application of §§ 1 and 2.

§ 4. With regard to the application of the **personal income tax regime**, the **net result as stipulated in accordance with §§ 1 and 2 will consist of the net professional income resulting from diamond trade**. With regard to the application of the **corporate income tax regime**, the **net result** as stipulated in accordance with §§ 1 and 2 will function as **net profit resulting from diamond trade**. With regard to the application of the **non-resident income tax regime**, the **net result** as stipulated in accordance with §§ 1 and 2 will function as the **net amount of the total proceeds regarding the net profit resulting from diamond trade**.

§ 5. With regard to the determination of the taxable result of a company or a Belgian permanent establishment, the amount of net taxable income is calculated according to this provision and, if applicable, this amount thus calculated is **increased with the positive difference between the reference remuneration to be paid to a company director / manager as set forth by this paragraph and the highest reference remuneration as effectively recorded as a business expense** by the aforesaid company or Belgian establishment during the taxable period concerned.

This reference remuneration is determined in relation to the turnover realized from diamond trade and amounts to resp.:

- 19,645 EUR for a turnover up to 1,620,720 EUR
- 32,745 EUR for a turnover more than 1,620,720 EUR and up to 8,103,595 EUR
- 49,110 EUR for a turnover more than 8,103,595 EUR and up to 16,207,190 EUR
- 65,485 EUR for a turnover more than 16,207,190 EUR and up to 32,414,380 EUR
- 81,855 EUR for a turnover more than 32,414,380 EUR and up to 48,621,570 EUR
- 98,225 EUR for a turnover in excess of 48,621,570 EUR

As regards the application of this provision, the term “**company director / manager**” should be understood as the natural person / individual who exercises a function as laid down in article 32, 1st paragraph, 1° or 2° of the Belgian Income Tax Code 1992.

Every company or Belgian establishment being registered as a diamond trader, **is deemed to have appointed a company director / manager** in order for the positive difference between the reference remuneration and the **reference remuneration as effectively recorded as a business expense** during the taxable period is added to each registered diamond trader company or Belgian establishment.

If a **company acts as a company director / manager** of a registered diamond trading company or Belgian establishment, the minimum reference remuneration’ condition is deemed to be fulfilled if the registered diamond trader pays at least the required (minimum) remuneration to this company or Belgian establishment, and **said company or Belgian establishment on its turns at least pays out the required (minimum) remuneration to the natural person / individual** who will consider this remuneration as (taxable) professional income subject to the **personal income tax regime** or the **non-resident income tax regime (individuals)**.

The provisions as laid down in **article 178, § 3, 1st indent, 2°, of the Belgian Income Tax Code 1992** are applicable to the amounts mentioned in this paragraph.

§ 6. The **net taxable professional income** with regard to the diamond trade as determined by this article **in any case amounts to at least 0.55% of the turnover stemming from the diamond trade**, if applicable, said amount is increased with the positive difference as determined in § 5, 1st indent of this article. It should be noted that solely for tax year 2017 this minimum floor percentage is replaced with 0.65%.

This minimum amount of net taxable income **cannot be lowered** with the **notional interest deduction, notional interest deduction carried forward or tax losses carried forward**.

The requirement as set forth in this paragraph does not come into play if the net accounting profit of the taxable period cf. Belgian accounting law is less than 0.55% of the turnover from diamond trade for reasons of resp. **theft, bankruptcy of a client or of the registered diamond trader in question**.

Art. 71

The regime as set out in articles 68 to 70 with respect to the determination of the taxable result stemming from the diamond trade does **not apply** to the result connected to the turnover with regard to which the **tax inspector can provide concrete elements that this (turnover) was realized through transactions other than sincere and habitual diamond trades.**

Art. 71/1

The King has to present at least every five years following the effective date of entry into force of the Diamond Regime an evaluation report to the Belgian Chamber of Representatives addressing the contribution of the regime to the Belgian Treasury. By doing so, one can assess the reliability of the percentage of the (fixed) gross margin amount, that is determined as the cost of diamonds sold as stipulated in article 70, § 1.

Art. 72

The provisions of this chapter will enter into force as from **tax year 2017.**

Any change as from March 30, 2015 onwards that would modify the closing date of the accounting period, remains without any effect as regards the application of the provisions as stipulated in the first paragraph.

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