New Belgian tax regime for carried interest

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A Program Law containing a first wave of the Arizona coalition's tax measures has been adopted by the Belgian Parliament on 18 July 2025. This note focuses on the specific tax regime for carried interest as introduced by the Program Law. Carried interest is income received by investment fund managers in the form of a share of the profits made by the fund in which they are employed and in which they have invested. Under the new dedicated tax regime, carried interest will now be taxed as 'movable income' at a specific rate of 25%. The new regime is likely to avoid future discussions on the tax classification of carried interest, but its scope is less extensive than initially envisaged.

Concept

In most cases, (private equity) investment funds are established with the aim of investing the capital raised and generating a return for investors within a fairly short period of time. These funds often have a limited lifespan, for example 10 or 12 years.

Typically, the fund managers themselves invest in a specific category or class of shares issued by the investment fund. To do so, they may acquire carried interest shares (which are subordinated) or receive options on such shares.

In order to maximise the incentive offered to fund managers, these carried interest mechanisms generally entitle fund managers to a share in the profits only when the fund's performance exceeds a certain threshold (known as the 'hurdle'). The profit share above this threshold is, however, higher for fund managers than for passive investors (the limited partners); for instance, 20% of the profits above the hurdle is allocated to the fund managers, while the remaining 80% is distributed among the passive investors. Carried interest is therefore a riskier form of investment, but it offers fund managers the possibility of achieving a much higher return on their investment than passive investors.

Previous tax treatment

Previously, there was no specific tax regime applicable to carried interest.

Capital gain

Carried interest shares in which fund managers invested were generally considered to form part of their private estate from the moment they were acquired. But the tax treatment of capital gains subsequently realised on these assets could give rise to disputes. While the taxpayer may considered this as a tax-exempt capital gain on shares, the Belgian tax authorities typically argue that such capital gain is taxable as miscellaneous income (because of being outside the 'normal management of private estate') or even as professional income (with generally limited chance of success). The Belgian Tax Ruling Commission, on the other hand, has decided on several occasions that a capital gain on carried interest shares was taxable as miscellaneous income (see, for example, ruling no.° 2024.0838 of 4 February 2025).

Dividend

Where carried interest was distributed in the form of a dividend, it was generally taxable as movable income, despite its disproportionate return and link with the professional activity (see in particular ruling no. 2024.0794 of 18 February 2025; point 177).

It is however not uncommon for carried interest shares to be held by an intermediate company ('CarryCo') in which fund managers themselves hold a stake. Such CarryCo is generally tax-exempt on dividends or capital gains received from the fund under the Belgian participation exemption. In such set-up, the Ruling Commission paid particular attention to the application of the reduced withholding tax rate (eg under the *VVPRbis* regime) on dividends distributed by the CarryCo to the fund managers. In this respect, the Ruling Commission generally confirmed (at least in recent rulings) that the application of the 15% withholding tax rate to such payments under the *VVPRbis* regime does not constitute a tax abuse (compare, for example, ruling no. 2019.0611 of 24 September 2019 in which the Ruling Commission does not rule on whether the application of the reduced rate constitutes a 'tax abuse' (point 99) and ruling n° 2024.0545 of 3 September 2024 in which the Ruling Commission clearly confirms that the application of the *VVPRbis* scheme cannot be refused in this case on the basis of Article 344, § 1, Belgian Income Tax Code (point 41)). But it has also held that a CarryCo whose lifespan is tied to that of the investment fund cannot create a 'liquidation reserve' (when such a reserve is distributed upon the company's dissolution, no additional individual income tax is due). The idea that, in the latter case, carried interest could be distributed almost tax-free at the time of the planned liquidation of the CarryCo was clearly a step too far for the Ruling Commission (ruling No. 2024.0545, point 119).

Fund managers also often operate through their own management company, which itself participates in the CarryCo. If the latter is considered to be an 'investment company', the management company may benefit from the Dividend Received Deduction on dividends distributed by the CarryCo, without the participation condition having to be met (on the basis of Art. 202, § 2, 3rd indent, 3°, Belgian Income Tax Code; see in particular ruling no. 2024.0836 of 18 February 2025). In this case too, the Ruling Commission considers that the management company cannot constitute a liquidation reserve, except where that company is used on a long-term basis for the duration of the fund manager's career, and is therefore not dissolved prematurely in order to pay the carried interest and continue the manager's activities through a new management company (see for example ruling no. 2024.0838 cited above).

Ultimately, one could say that the uncertainty surrounding the tax status of carried interest had relatively limited practical impact, since, by interposing a company receiving and (re)distributing the carried interest, it will be taxed at 15% if the conditions of the *VVPRbis* regime are met (otherwise the rate will be of 30%).

Government agreement

The Federal Government agreement expressed the intention to introduce 'a specific tax regime' for carried interest, which would be 'competitive [...] compared to existing regimes in neighbouring countries, in order to stimulate [investment] funds activity in Belgium'.

However, the relevant section of the governmental agreement provided little indication of the form that this new tax regime would take. Only the classification of carried interest as movable income seemed certain. For the rest, the text of the government agreement indicated that the tax rate would be capped at a 'maximum' of 30% and that the new regime would have no impact on 'existing plans'.

Program Law

Specific category of movable income

The Program Law provides for a uniform classification of carried interest as movable income, regardless of the actual form in which the carried interest is distributed or realised (dividends, interest, capital gains, share buy-back proceeds, liquidation proceeds, etc.). To this end, a new category of movable income is added to the list in Article 17 of the Belgian Income Tax Code: *'carried interest received by a carried interest beneficiary'*.

- **Three sub-categories** - The new definition of carried interest is included in a new Article *19quater* of the Belgian Income Tax Code and covers :
  i. 'the part of the profits from a carried interest vehicle, including dividends, which is paid or allocated to a carried interest beneficiary, in any form whatsoever, by or through [such] vehicle',
  ii. 'the capital gain realised by the carried interest beneficiary on the disposal of his rights in the carried interest vehicle', as well as
  iii. buy-back and liquidation proceeds obtained from the carried interest vehicle.

  The explanatory memorandum states that the definition of carried interest has been 'deliberately kept general', 'given that carried interest can be structured in many different ways'.
- **Deduction of the acquisition value of the rights** - For each of the three forms of carried interest, it is specified that the acquisition value of the rights in the 'carried interest vehicle' must be deducted from the income. It is possible for a carried interest beneficiary to receive carried interest in several of the above-mentioned forms, for example when the hurdle has already been reached while the fund still has several investments in progress (eg interim dividends and subsequent capital gains or liquidation dividends). In any case, it seems logical that the acquisition value can only be deducted once.
- **Disproportionate return only** - In addition, for each of the three sub-categories of carried interest it is specified that the qualification as 'carried interest' does not apply to the proportionate return, ie, the return on investment (by the carried interest beneficiary in that carried interest vehicle) which does not exceed in aggregate what an investor who is not a carried interest beneficiary receives from his investment. In other words, the new regime catches solely the 'disproportionate' return received by the carried interest beneficiary (see also the section on (dis)proportionate return below).
- **Allocation of profit without investment** - The question arises, however, as to whether the carried interest classification can also apply where the relevant part of the profit is contractually allocated to the carried

interest beneficiary, without the latter having invested in the carried interest vehicle. Based on the broad definition of the first sub-category of carried interest (profit paid or allocated 'in any form whatsoever'), this seems at least defensible. There is then likely no acquisition value or 'proportionate' return, meaning that the entire profit share qualifies as carried interest.

- **No deduction of costs in the case of a capital gain** - Where the carried interest takes the form of a capital gain, the explanatory memorandum also states that no costs (eg for the acquisition or disposal of the relevant rights) may be deducted from this capital gain, in accordance with Article 22,§ 1, 2nd indent Belgian Income Tax Code (according to this article, 'collection costs, custody costs and other similar costs' may only be deducted to determine net income where movable income is taxed on a 'global' basis; which is not the case for carried interest, since such income is taxed separately; see below). This position is likely partly motivated by the case law of the Constitutional Court, which has decided that the principle of equality requires that such a deduction of expenses must be allowed in the case of capital gains on shares or units which arise from the abnormal management of private estate and which are therefore taxable as 'miscellaneous income' (see Constitutional Court, 21 September 2023).
- **Vehicle with a derogatory tax regime** - Article 21, 1st indent, 2° Belgian Income Tax Code provides that redemption or liquidation bonuses received from an investment company with a derogatory tax regime do not qualify as movable income. Since it is possible for a carried interest vehicle to benefit from a derogatory tax regime (eg a '*private privak*'/'*pricaf privée*'), the Program Law has amended said Article 21 to allow taxation of carried interest obtained through the third category of carried interest (buy-back or liquidation dividends).
- **Notions of carried interest 'vehicle' and 'beneficiary'** - The law also provides definitions of the terms 'carried interest vehicle' and 'carried interest beneficiary' (new Art. 2, § 1, 22° and 23°, Belgian Income Tax Code).
  - The definition of 'carried interest vehicle' covers any 'Belgian or foreign undertaking for collective investment (UCI), including [its] investment compartments, which raises capital from a number of investors with a view to investing it, in accordance with a defined investment policy, in the interests of those investors, and which does not meet the conditions of Directive 2009/65/EC', ie the UCITS Directive. In other words, these are alternative investment funds (AIF). To explain the application to such funds only, the explanatory memorandum refers to the fact that carried interest constitute income specifically linked to alternative investment funds.
  - A 'carried interest beneficiary' is described as 'any natural person or related person who carries out activities, directly or indirectly, for a carried interest vehicle or its manager'.

(Dis)proportionate return

As indicated, the scope of the new regime is limited to 'actual' carried interest, ie the 'disproportionate' return that employees of an investment fund make on their investment in the fund for which they work (whether directly or indirectly).

The fact that only the 'disproportionate' return is considered to be carried interest and thus falls within the new specific category of movable income implies, in our view, that the 'proportionate' part of the return retains its ordinary classification and tax treatment. This tax treatment therefore remains dependent on the form in which the income is realised, for example as an 'ordinary' dividend (generally taxable at 30%) or as a capital gain on shares or units (for which the new 10% tax on capital gains on financial assets – as announced in the governmental agreement - will likely have to be taken into account). Classifying this 'proportionate' return as professional income does not seem possible in most cases.

However, the determination of the 'proportionate' part of the return could still give rise to discussion in the future. Indeed, the explanatory memorandum states, for example, that 'the return resulting from the non-payment of the management fee owed by the carried interest vehicle to its manager' may also be considered a 'normal' return. The explanatory memorandum justifies this point of view by noting that, depending on the size of his investment, 'ordinary' investors in different classes of shares may also owe different management fees. However, this assumption suggests that, despite the broad wording of the text, any difference in return between a carried interest beneficiary and a passive investor might not necessarily be considered a disproportionate return (and therefore carried interest).

Finally, it should be noted that the regime does not apply to the potential disproportionate return on financial instruments granted outside the specific context of carried interest as defined above. Such more broadly formulated disproportionate return on financial instruments (known as an 'excess return') was targeted in the tax reform plan of former Minister of Finance Vincent Van Peteghem. Such plan was for instance also aimed at management incentive plans set up after an acquisition by a private equity fund, in which the management of the acquired company invests in other financial instruments (or in a different proportion) than the financial investor, and can thereby achieve a 'disproportionately' higher return.

Separate rate and no reclassification

The new category of carried interest movable income will be subject to a separate tax rate of 25% and is not subject to municipal taxes (new Art. 171, *3°octies*, Belgian Income Tax Code and amendment of Art. 466, 2nd indent Belgian Income Tax Code).

The possible application of Article 37 Belgian Income Tax Code, which in principle authorises the tax authorities to reclassify movable income of a 'professional nature' as professional income, is also explicitly excluded for carried interest (new Article 37, 6th indent, Belgian Income Tax Code). Consequently, the classification as movable income cannot be denied.

The explanatory memorandum states that the introduction of a specific tax regime for carried interest was inspired by neighbouring countries. According to the explanatory memorandum, the 25% rate is also competitive compared with neighbouring countries. 'In this way, Belgium remains attractive for investment funds'. Furthermore, the explanatory memorandum highlights that this rate is partly motivated by the aim of making the choice between receiving carried interest by an individual or through a (management) company 'as tax-neutral as possible' (in fact, as explained below, the new regime will apply only to carried interest paid to individuals).

The classification as movable income also means that no social security contributions will be due on carried interest, which would be the case upon a reclassification into professional income. This is very important for carried interest beneficiaries who are employees, and even more so for their employers, considering the high potential cost of employer social security contributions.

Withholding tax

The classification of carried interest as a form of movable income also means that withholding tax is payable at the moment it is attributed. To this end, the legislator has also introduced a specific withholding tax rate of 25% on carried interest (new Art. 269, § 1, 10°, Belgian Income Tax Code).

The debtor of the withholding tax is the person liable for payment of the carried interest (amendment of Art. 261, 1st indent, 4°, Belgian Income Tax Code). As regards the first category of carried interest (allocation of profits, including in the form of dividends) and the third category (buy-back or liquidation dividends), the debtor will probably be the carried interest vehicle itself. As regards the second category of carried interest (capital gains), this would appear to be the person acquiring the carried interest rights.

The responsibility for correctly determining the carried interest, considering both the acquisition value and the 'disproportionate' part of the beneficiary's return, therefore lies primarily with the debtor. It is likely that the debtor will have all the necessary information to apply the regime correctly. This may also be the case where carried interest rights are sold to a third party, since such rights are generally not freely transferable, except to the carried interest vehicle, its manager or another carried interest beneficiary.

The law also provides for a specific rule when the carried interest is paid by a foreign 'carried interest vehicle' (X) which is linked to the entity (Y) for which the carried interest beneficiary carries out the professional activities which gave rise to the attribution of carried interest. In this case, the debtor of the withholding tax on the carried interest is Y, the entity employing the carried interest beneficiary (new Article 261, 5th indent, Belgian Income Tax Code), by analogy with the comparable rule in Article 270, last indent, Belgian Income Tax Code, which applies to wage withholding tax. The explanatory memorandum notes that this provision targets 'complex structures involving several distinct legal entities in the payment of carried interest'. This obviously assumes that the entity liable for the withholding tax receives the necessary information to be able to withhold it correctly.

The explanatory memorandum further specifies that the carried interest paid by a Belgian 'carried interest vehicle' to individuals who are not Belgian tax residents will be taxed in Belgium pursuant to Article 228, § 2, 2° of the Belgian Income Tax Code (on the basis of which movable income is subject to non-residents tax if the debtor is liable to personal income tax, corporate income tax, legal entities tax or non-resident tax and the income 'is obtained or collected in Belgium'). However, in our view, due consideration must also be given to double tax treaties. For residents of a country with which Belgium has concluded such a treaty, the treaty will often prevent Belgium from (fully) applying the carried interest regime. Indeed, the new classification of carried interest (whatever its form) as a specific type of movable income for Belgian tax purposes will, in our view, not extend for purposes of applying the double tax treaties (on the basis of the principle that fictions in domestic law that could influence taxing powers generally have no effect on the application of double tax treaties). Rather, it seems to us that carried interest will retain its 'normal' classification, depending on the form in which it is realised (dividend, capital gain on shares, etc.). The applicable treaty will therefore often prevent Belgium (as the source state) from taxing this income, at least at a rate of 25%.

In addition, the fact that the new regime explicitly excludes the reclassification of carried interest as professional income (see above) will also apply to non-residents, in our view, so that the Belgian tax authorities will not be able to recharacterise carried interest as professional income in a treaty context either.

Only for individuals, not for companies

The new regime only applies to carried interest obtained by individuals. Indeed, the new definition of carried interest requires it to be paid directly between a 'carried interest vehicle' and a carried interest beneficiary (an individual person). The explanatory memorandum therefore specifies that, if the carried interest is received by a company, 'the current regime remains applicable'.

As a result, the new regime does not apply to fund managers who have set up their own management company, since it is the company that receives the carried interest and may redistribute it.

- **CarryCo** - The question arises as to whether this reasoning also applies where carried interest beneficiaries (ie individuals) are grouped together in a CarryCo, which then holds the carried interest rights in the fund. As mentioned above, this is a common structure. This question arises mainly because, strictly speaking, such a CarryCo may itself meet the definition of an AIF (Alternative Investment Fund) and therefore of a 'carried interest vehicle' in accordance with the Program Law, even though it will not generally be subject to the obligation to register or obtain authorisation under AIF legislation, given the specific context (limited to the fund manager's personnel, limited stake, etc.). Will the new carried interest regime apply when an individual receives carried interest through such a CarryCo? In our view, this would not be the case since the new legal provisions, including the definition of carried interest in the new Article *19quater* of the Belgian Income Tax Code, relate rather to cases where the carried interest rights are held directly by an individual. Nor does it appear from the explanatory memorandum that the intention is to extend the new regime to arrangements in which carried interest rights are held by a company, even if the carried interest ends up in the hands of an individual.
- **Liquidation reserve** - To address the redistribution of carried interest by an intermediary company (whether a CarryCo or an individual management company) to its individual shareholders, the law provides for a specific exception. Going forward, a company may no longer create a liquidation reserve as long as it holds shares or units in a carried interest vehicle, 'up until the year in which these shares or units have been disposed of' (new Art. *184quater*, 2nd indent, Belgian Income Tax Code).

  According to the explanatory memorandum, the aim is to prevent carried interest from being paid 'in a too advantageous manner' through a management company. The explanatory memorandum also mentions that this exception is also aligned with 'the practice already applied by the Ruling Commission'. This remark no doubt refers to the Ruling Commission's reluctance regarding the payment of carried interest via a liquidation reserve (see above).

  But does this prohibition apply to a personal management company holding no rights in the investment fund itself, but in a CarryCo? Given that the CarryCo itself will often be regarded as an AIF and therefore as a 'carried interest vehicle', the prohibition would also seem to apply to it. On the other hand, if the CarryCo itself does not fall within the definition of a 'carried interest vehicle', strictly speaking, it still seems possible for the management company to set up a liquidation reserve and thus indirectly distribute the carried interest in this way, unless this would be considered tax abuse (cf. the Ruling Commission's point of view already mentioned).
- ***VVPRbis* regime** - While the Program Law excludes the distribution of carried interest via the liquidation reserve, it does not affect the potential application of the *VVPRbis* regime (since it does not amend that regime with respect to carried interest). A redistribution of carried interest by a CarryCo or by an individual management company subject to the reduced 15% withholding tax rate under the *VVPRbis* regime therefore remains possible, in principle, if the relevant conditions are met.

In principle, therefore, the new regime imposes no restrictions on the carried interest arrangements described in the introduction of this note, which can lead, via one or more intermediary companies, to a total effective tax cost of (at least) 15% on carried interest (for both the 'disproportionate' and the normal return).

Given that such carried interest arrangements are market practice and are well known to both the legislator and the Ruling Commission, it appears unlikely that holding carried interest through intermediary companies would be considered a tax abuse simply because of the circumvention of the new carried interest regime. The fact that the legislator only excludes the payment of carried interest via the liquidation reserve also confirms, in our view, that the combination of carried interest and the *VVPRbis* regime does not constitute a tax abuse and does not seem to undermine the legislator's intention. After all, the legislator is well aware that, in practice, taxpayers also apply the *VVPRbis* regime for the redistribution of carried interest via management companies, for example, and nevertheless decided to exclude only the use of the liquidation reserve.

Exclusion of stock options

Finally, the Program Law excludes the following income from the definition of carried interest: 'income which will be obtained in relation to shares acquired following the exercise of stock options in application of the law of 26 March 1999 on stock options' (new Art. *19quater*, 2nd indent, Belgian Income Tax Code). The law of 1999 (the 'Stock Option Law'), provides that stock options are subject to tax at the time they are granted; in the case of unlisted options, the taxable advantage is assessed on a lump sum basis as a percentage of the value of the underlying shares at the time of grant; the capital gain realised when the options are exercised or the underlying shares are subsequently sold is not taxable as professional income.

The explanatory memorandum confirms that this exception applies to carried interest 'of any kind' (in other words, it applies to the three sub-categories of carried interest mentioned above).

On the one hand, this exception is somewhat surprising in that the granting of options on carried interest shares is a known practice. For instance, during the parliamentary work on the private pricaf legislation in 2003, the Minister of Finance already recognised the (potential) tax advantage of granting options on carried interest shares (*Doc. parl.,* Chambre, 2002-2003, n° 2349/002, p. 12). The exception is therefore somewhat contradictory to the statement made in the explanatory memorandum according to which the definition of carried interest has been 'deliberately kept general', as carried interest 'can be structured in many different ways' (see above).

On the other hand, applying the Stock Option Law inherently carries some risk, since the final tax burden may exceed 25% and the option holder may even have to bear a loss if the investment fund underperforms (as the tax paid upon grant of the stock options is not recoverable). The government may therefore see some equivalence between the two tax regimes, allowing them to co-exist. In addition, the new carried interest regime would be rather complex to implement if it were also to apply to stock options (since the tax already paid on the granting of options under the Stock Option Law and the tax due under the new carried interest regime could not, of course, be applied jointly).

While the government agreement initially stated that the new regime would not apply to 'existing plans' (see above), it was finally decided not to apply it at all to stock option plans (at least where the Stock Option Law is applicable).

Carried interest beneficiaries within scope of the new carried interest regime will therefore be able to choose between the application of this dedicated regime or rather the grant of stock options within the framework of the Stock Option Law. Given the often limited value of the underlying carried interest shares at the time of grant, stock options may remain an attractive alternative for structuring carried interest. However, one will also need to consider the (risk of) taxation of any capital gains realised subsequently when the options are exercised or the shares sold, not as professional income (see above), but either as miscellaneous income or in accordance with the announced general capital gains tax on financial assets.

Entry into force

The new regime will come into force on the date of publication of the law in the *Belgian Official Gazette* and will apply in principle to carried interest paid or allocated from that date on.

As an exception, the new regime will not apply to carried interest paid or allocated by a carried interest vehicle that is liquidated no later than this date of entry into force.

With regard to the prohibition on setting up a liquidation reserve for companies holding carried interest rights, the Program Law provides a separate entry into force. 'In the interests of legal certainty and reasonable predictability', this prohibition will apply as from assessment year 2026.

Conclusion

For the first time, Belgian tax law has a specific tax regime for carried interest. The scope of this regime appears to be limited to cases in which an individual directly holds carried interest rights. In such cases, the regime will apply automatically (and not on an optional basis), unless the carried interest rights have been acquired via stock options in accordance with the Stock Option Law. On the other hand, where the carried interest rights are held by a company, the new regime will not apply. In other words, it remains possible to structure carried interest in accordance with the needs of each situation.

Nikolaas Van Robbroeck
Counsel/Brussels Head of Tax
T +32 2 504 7230
E nikolaas.vanrobbroeck@freshfields.com

Maxim Wuyts
Associate, Brussels
T +32 2 504 7107
E maxim.wuyts@freshfields.com