

# DOING BUSINESS IN BELGIUM

JANUARY 2014



# PREFACE

Belgium has a strategic location in the heart of Europe. Internationalised and leading the world in per capita exports, Belgium offers a well-educated and trained labour force, which is multi-lingual and strongly committed to high productivity and quality. Equipped with a powerful infrastructure and excellent transportation facilities, Belgium offers prime opportunities for companies that want to locate their European business or headquarters in the centre of the European market place.

The purpose of this business and taxation Guide is to provide an overview of the main legal and taxation characteristics and business formalities in Belgium. It is not intended to be comprehensive, neither does the information contained in this guide constitute tax or legal advice. It is designed to inform potential investors of the main elements that should be taken into consideration when investing in Belgium.

Mazars Tax Consultants in Belgium prepared this guide. Wherever possible, information has been updated until 15 January 2014. While every effort has been made to ensure the accuracy of this guide's content, seeking professional advice and guidance before establishing a business or investing in Belgium is always highly recommended.

Peter De Vos  
Tax Partner

Mazars Tax Consultants  
Bellevue 5 - B 1001  
9050 Gent  
Belgium (EUROPE)  
Tel. : +32 (0)9 265.83.20  
E-mail: peter.devos@mazars.be

*Mazars is an international, integrated and independent organisation specialising in audit, advisory, accounting, tax and legal services. Mazars can rely on the skills of 13,500 professionals in the 71 countries which make up its integrated partnership in Europe, Africa, the Middle East, Asia Pacific, North America, Latin America and the Caribbean to assist companies – major international groups, SMEs, private investors – and public bodies, at every stage in their development. Mazars also has correspondents and representative offices in additional countries.*

*Mazars is one of the founding members of the Praxity Alliance.*

© Praxity 2014

*This guide is intended as a general guide only and should not be acted upon without further advice.*

# CONTENTS

<b>1. GENERAL INFORMATION</b>	<b>7</b>
1.1 Opportunities for foreign investors	7
1.2 Area and population	7
1.3 Government and law	8
1.4 Economy	8
1.5 Financial status	9
1.6 Currency	9
<b>2. REGULATION OF FOREIGN INVESTMENT</b>	<b>10</b>
<b>3. GOVERNMENT INCENTIVES</b>	<b>11</b>
3.1 Business grants and incentives	11
3.2 Tax incentives for R&D activities	12
3.2.1 Patent income deduction	12
3.2.2 R&D payroll withholding tax incentive for researchers	13
3.2.3 Tax breaks for R&D investments (increased investment deduction or R&D tax credit)	13
3.2.4 Expatriate tax status in R&D	14
3.2.5 Regional R&D subsidies	14
3.2.6 Accelerated depreciation	14
3.2.7 Structural funding for R&D projects (R&D grants)	14
3.2.8 Flexible advance ruling practice in tax matters	14
3.3 Notional interest deduction	15
3.4 Tax shelter regime for audio visual works	15
3.5 Tonnage tax regime	15
3.6 Dividend withholding tax exemption	16
<b>4. BUSINESS ORGANISATIONS AVAILABLE TO FOREIGNERS</b>	<b>17</b>
4.1 Common company types	17
4.1.1 Key features of a SPRL/ BVBA	18
4.1.2 Key features of a SA/NV	18
4.2 Other company types	18
4.2.1 Key features of a GCV/SCS (limited partnership)	19
4.2.2 Key features of a CVBA/SCRL (limited cooperative)	19
4.3 Partnerships	20
4.4 Joint ventures	20

4.5	European Economic Interest Grouping (EIG)	20
<b>5.</b>	<b>SETTING UP AND RUNNING BUSINESS ORGANISATIONS</b>	<b>21</b>
5.1	Setting up a business organisation	21
5.1.1	Business environment	21
5.1.2	Legal branch of a foreign corporation	21
5.1.3	Labour law	22
5.2	Running a business organisation	23
5.2.1	Management	23
5.2.2	BEGAAP accounting and filing requirements	23
5.2.3	Audit requirements	23
5.2.4	Reporting formalities	24
5.2.5	Retention of documents	24
5.3	Dissolution of a business organisation	24
<b>6.</b>	<b>CORPORATE TAXES AND SOCIAL CHARGES</b>	<b>25</b>
6.1	Corporate Income Tax (CIT)	25
6.1.1	Taxable entities	25
6.1.2	Taxable profit	25
6.1.3	Depreciation and amortisation	26
6.2	CIT rates	26
6.3	Secret commission tax	27
6.4	Tax incentives	27
6.5	Capital gains tax	27
6.6	Tax losses	27
6.7	Dividend income taxation	28
6.8	Withholding taxes	28
6.8.1	Dividends	28
6.8.2	Interest	29
6.8.3	Royalties	29
6.9	Branch profits taxation	29
6.10	Anti-avoidance rules	30
6.10.1	General anti-abuse provisions	30
6.10.2	Transfer Pricing (TP)	30
6.10.3	Debt-to-equity ratio requirements (thin capitalisation)	30
6.10.4	Tax haven disclosure requirements	30
6.10.5	Controlled foreign company	30
6.11	Tax compliance	31
6.12	Wages and social security	31
6.12.1	Social security contributions	31

6.12.2	Wage taxes	32
6.12.3	Other employer costs	32
6.12.4	Self-employed persons	32
6.13	Other local enterprise taxes	33
6.13.1	Real estate property tax	33
6.13.2	Stamp duty	33
6.13.3	Real estate transfer taxes	33
<b>7.</b>	<b>PERSONAL TAXATION</b>	<b>34</b>
7.1	Tax residence	34
7.2	Taxable income	34
7.2.1	General information	34
7.2.2	Income from real estate property	34
7.2.3	Income from movable property	35
7.2.4	Professional income	35
7.2.5	Miscellaneous income	37
7.3	Personal tax rates	38
7.3.1	General information	38
7.3.2	Personal deductions, allowances and credits	38
7.4	Tax compliance	39
7.5	Other taxes on income	40
7.5.1	Communal tax	40
7.5.2	Immovable withholding tax	40
7.6	Cross border employment	40
7.6.1	LIMOSA	40
7.6.2	Expatriate individuals	40
7.6.3	Immigration	41
<b>8.</b>	<b>DOUBLE TAXATION AGREEMENTS</b>	<b>42</b>
<b>9.</b>	<b>VALUE ADDED TAX (VAT) AND OTHER INDIRECT TAXES</b>	<b>43</b>
9.1	Value Added Tax (VAT)	43
9.1.1	VAT definition	43
9.1.2	Taxable persons	43
9.1.3	Taxable transactions	44
9.1.4	Exemptions	44
9.1.4	VAT Rates	45
9.1.5	Deduction of VAT (or input tax)	45
9.1.6	Filing and paying VAT	45

9.1.7	Special schemes and simplification measures	46
9.1.8	Foreign companies doing business in Belgium	46
9.1.8.1	VAT liabilities	46
9.1.8.2	Reverse charge mechanism	47
9.2	Importation duties	47
9.3	Registration duties	47
9.3.1	Proportional registration duties	48
9.3.2	Specific fixed duties	48
9.3.3	General fixed duty	48
9.4	Donation duties (gift tax)	48
9.5	Inheritance tax	49
<b>10.</b>	<b>PORTFOLIO INVESTMENT FOR FOREIGNERS</b>	<b>50</b>
10.1	General investment information	50
10.2	Stock exchange requirements	50
<b>11.</b>	<b>TRUSTS</b>	<b>51</b>
11.1	Foreign trusts in Belgian law	51
11.2	Belgian taxation of trusts	51
11.3	New disclosure obligations on private estate and off-shore structures	51
<b>12.</b>	<b>PRACTICAL INFORMATION</b>	<b>52</b>
12.1	Transportation	52
12.2	Language	52
12.3	Business hours	52
12.4	Time relative to Greenwich Mean Time (GMT)	52
12.5	Public holidays (2014)	52
12.6	Why MAZARS BELGIUM?	53
12.7	MAZARS International	54
<b>13.</b>	<b>IMPORTANT DISCLAIMER</b>	<b>55</b>

# 1. GENERAL INFORMATION

## 1.1 Opportunities for foreign investors

The Kingdom of Belgium is very open to investments from abroad. Many foreign companies are active here, doing business either as a subsidiary or as a branch office. Due to its location and uniqueness, Belgium is well regarded as a location for setting up business enterprises in Europe.

Excellent sales opportunities persuade foreign investors to establish themselves in Belgium, providing a significant transitory market for sales throughout Europe and the rest of the world. They are also encouraged to invest because of attractive terms of finance, a low inflation rate and a favourable competitive environment.

Investing in Belgium means investing in the political heart of the European Union, i.e. the single European market with 500 million consumers.

## 1.2 Area and population

The Kingdom of Belgium lies in the heart of Europe. It is a founding member of the European Union and hosts the EU's headquarters, as well as several other major international organisations, such as NATO. Belgium covers an area of 30,528 square kilometres (11,787 sq. miles), and it has a population of about 11 million people. Straddling the cultural boundary between Germanic and Latin Europe, Belgium is home to two main linguistic groups:

- Dutch-speakers, mostly Flemish (about 60%)
- French-speakers, mostly Walloons (about 40%)
- A small group of German-speakers.

Belgium's two largest regions are the Dutch-speaking region of Flanders in the north and the French-speaking southern region of Wallonia. The Brussels-Capital Region is officially bilingual but in practice it's the multilingual capital of the European Union.

Belgium has a total of three international airports - in Brussels, Charleroi and Antwerp. Its harbours provide access to the North Sea. The passenger and freight railway network, as well as excellent motorways, complete a well developed transportation system.

The Belgian climate, like most of northwest Europe, is maritime temperate, with significant precipitation in all seasons. The average temperature is 3 °C in January, and 18 °C in July. Belgium has mild winters and cool summers and is typically rainy, humid and cloudy.

### 1.3 Government and law

Belgium is a constitutional, popular monarchy and a federal parliamentary democracy.

The bicameral federal parliament comprises a Senate and a Chamber of Representatives.

The Senate is made up of 40 directly elected politicians and 21 representatives appointed by the three Community parliaments, 10 co-opted senators. The children of the King are Senators by Right, who in practice do not cast a vote.

The Chamber's 150 representatives are elected under a proportional voting system from 11 electoral districts. Belgium has compulsory voting, which means that it has one of the highest voter turnouts in the world.

The Belgium King is the head of state. He appoints ministers, including the Prime Minister.

The Council of Ministers comprises no more than fifteen members and has an equal number of Dutch-speaking members and French-speaking members.

Belgium's judicial system is based on civil law and originates from the Napoleonic code.

Apart from the Federal State and the Communities, there are the three Regions in Belgium. The names of the three regional institutions are borrowed from the name of the territory they represent and are (from north to south) the Flemish Region, the Brussels-Capital Region and the Walloon Region.

Their powers have been extended in the course of the various reforms. The Regions have legislative and executive organs: these are known as the Regional Parliament and the Regional Government. The population elects the members of the Regional Parliament directly every five years.

### 1.4 Economy

The modern, private enterprise economy of Belgium has capitalised on its central geographic location, highly developed transport network, and diverse industrial and commercial base. The first country to undergo an industrial revolution on the continent of Europe in the early 19th century, Belgium developed an excellent transportation infrastructure of ports, canals, railways, and highways to integrate its industry with that of its neighbours.

Industry is predominantly based in Flanders in the north, around Brussels and in the two largest Walloon cities, Liège and Charleroi.

Belgium imports raw materials and semi-finished goods that are further processed and re-exported. Except for its coal, which is no longer economical to exploit, Belgium has virtually no natural resources. Nonetheless, most traditional industrial sectors are represented in the economy, including:

- Steel
- Textiles
- Refining
- Chemicals
- Food processing
- Pharmaceuticals
- Automobiles
- Electronics
- Machinery fabrication.



Despite the heavy industrial component, the service industry accounts for 74.9% of Belgium's GDP, while agriculture accounts for only 1% of GDP.

With exports equivalent to over two-thirds of GNP, Belgium depends heavily on world trade. Belgium's trade advantages are derived from its central geographic location and a highly skilled, multilingual, and productive work force. One of the founding members of the European Community, Belgium strongly supports deepening the powers of the present-day European Union to integrate European economies further. Approximately three-quarters of Belgium's trade is with other EU countries.

The government succeeded in balancing its budget during the period of 2000 to 2008, and income distribution is relatively equal. Belgium began circulating the Euro currency in January 2002. The worldwide banking crisis has influenced the Belgian economy, but the economic situation continues to remain one of the most stable within the European Union.

## 1.5 Financial status

Belgium is one of the founder members of the European Union (formerly the European Community) and participates in the European Monetary System. It is also a member of the General Agreement on Tariffs and Trade and of the International Monetary Fund.

Belgium has a highly sophisticated banking system, including publicly-owned as well as private banks, which provide all of the customary banking services to businesses, including financial and commercial services.

Most short-term business financing is done by means of overdraft facilities and short-term loans. Although short-term lending is subject to interest rate fluctuations, this kind of financing is common practice in Belgium, often over extended periods.

Medium and long-term loans are usually secured by mortgages or guarantees issued by parent or group companies, or by third parties. Larger companies often cover their long-term financing needs by issuing bonds.

All financing options are available to Belgian and foreign investors, applying the same terms and conditions.

Belgium's credit rating is currently:

- Standard & Poors, AA (negative)
- Moody's, Aa3 (negative)
- Fitch, AA (negative).

Belgium's annual GDP is anticipated to turn positive in 2013, driven by net exports. In 2014, due to more dynamic private consumption, which will also push imports up, domestic demand is expected to become the sole contributor to growth with GDP expanding by 1.5%.

## 1.6 Currency

The unit of currency in Belgium is the Euro, represented by €. The International Standards Organization (ISO) currency code is EUR



## **2. REGULATION OF FOREIGN INVESTMENT**

Although each transfer of fund must comply with the anti-money laundering legislation, there are no currency control restrictions governing the transfer of funds into and out of Belgium. In addition, foreign ownership of Belgian businesses is not limited.

General regulations for several industries and professions do exist, however these restrictions apply equally to both national and foreign investors. For example, banks, insurance companies and stockbrokers are subject to close supervision by the Financial Services and Markets Authority (FSMA).

## 3. GOVERNMENT INCENTIVES

### 3.1 Business grants and incentives

In order to stimulate economic growth, various business grants and incentives are available to encourage investment and new employment in Belgium. These incentives are available either nationally or throughout Europe, although some are also region specific.

Since the law of regional devolution was introduced in Belgium in August 1980, investment incentives, subsidies and grants have been the responsibility of the regional investment agencies:

- Flanders Investment and Trade (FIT)
- The Office for Foreign Investment (OFI-AWEX) in Wallonia, and
- The Brussels Enterprise Agency.

In their investment policies, the regions are particularly keen to promote and encourage innovation, research and development (R&D), energy savings, environmental cleanliness, exports, and, most of all, employment.

Nonetheless, most tax measures are still controlled by the federal government, as are the general salary and benefit parameters (social security, wage agreements). In general, all regional and national incentives are available to foreign and domestic investors alike. Belgian investment incentive programmes at all levels of government are limited by EU regulations, and are therefore aligned with programmes available in the other EU Member States.

In Belgium, regional authorities offer grants to investors for setting up an enterprise in their area. For example Flanders Investors and Trade's regional authority gives special grants for ecological investments. The grant is applicable to a company of any size, irrespective of its location in the area. The size of the grant provided varies depending upon the size of the company.

The Flanders regional investment authority offers support to:

- Environmental investments
- Energy-saving investments
- Renewable energy
- Combined Heat and Power (CHP cogeneration).

The Belgium government also offers direct aid, labour and training incentives, R&D and international trade opportunities. In addition, it also offers subsidies to enterprises that:

- Create jobs
- Reduce social security payments and
- A special tax regime for organisations that employ foreign executives, researchers and specialists.

In order to stimulate economic growth, the Belgian federal government and the regional government have also implemented specific incentives for foreign companies starting up a business in Belgium. They can a.o. take the form of:

- Strategic investment aid - grants are available for investments in tangible fixed assets, such as buildings and equipment and, in certain cases, for investments in some intangible assets. An investment subsidy can be granted in the form of an interest rebate, a capital grant, or a combination of both, depending on how the project is financed (loan, self-financing or both)
- Strategic training aid
- Ecological subsidy - financial support which encourages companies to invest in state-of-the-art ecological technologies
- Reduced social security contributions
- Structural funding for R&D projects
- R&D-personnel tax incentives
- Tax deduction for patent income
- Notional interest deduction
- Expatriate tax regime
- Night and shift work tax incentives
- Investment deduction
- Exemption of withholding tax on dividends

Further details for some of the most popular and attractive tax incentives are featured below.

## **3.2 Tax incentives for R&D activities**

Supporting the Lisbon Strategy in making the EU "the most competitive and dynamic knowledge-based economy", over the last decade Belgium has invested heavily in R&D activities, implementing political measures to attract more R&D employees into Belgium.

Key Belgian R&D tax measures have been introduced to encourage and enable organisations to structure R&D activities in Belgium. These include:

- 80% tax deduction for patent income
- Tax breaks for R&D investments
- Advantageous measures for organisations that employ R&D staff
- Tax exemption on allowances and capital and interest subsidies awarded by regional institutions to support corporate R&D
- Structural funding for R&D projects
- Expatriate tax status in R&D.

### **3.2.1 Patent income deduction**

The patent deduction allows Belgian companies and Belgian branches of foreign companies to deduct 80% of their gross patent income from their tax base. This leads to a maximum effective tax rate of 6.8% on gross patent income.

To benefit from the patent income deduction, as of 1 January 2013 an organisation's R&D department no longer needs to qualify as a separate 'branch of activity', widening the scope of this tax incentive for Belgian companies.

### 3.2.2 R&D payroll withholding tax incentive for researchers

Providing researchers are employed in recognised R&D programmes and possess a qualifying degree (PhD, engineering or Master's degree), Belgian employers are exempt from remitting 80 % of the payroll withholding tax, withheld for remunerations attributed by a Belgian company or establishment to qualified researchers, to the Belgian tax authorities.

The R&D programs eligible for this wage tax exemption are aligned with the R&D programs defined on a EU level (Commission Regulation (EC) N° 800/2008 of 6 August 2008), i.e.:

- "fundamental research" means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view;
- "industrial research" means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts to complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes;
- "experimental development" means the acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for instance, other activities aiming at the conceptual definition, planning and documentation of new products, processes or services. Those activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use;
- To benefit from the partial withholding tax exemption, specific formalities must be fulfilled.

Research and development projects or programmes will only be eligible for the wage withholding tax exemption if they have been registered with the Belgian Federal Science Department.

For employee personal tax liability, the withholding tax is considered by the Belgian tax authorities to have been withheld by the company and therefore does not impact the tax situation of individual researchers.

### 3.2.3 Tax breaks for R&D investments (increased investment deduction or R&D tax credit)

Investment in patents and fixed assets used in Belgium to promote R&D activities are eligible for an increased investment deduction. This can be either 14.5% of the acquisition value or 21.5% on the annual depreciation that is permitted for corporate tax purposes.

To benefit from this deduction, the company should invest in new tangible and intangible fixed assets. These assets must be used for in-house R&D purposes and they must be capitalised and amortised.

As an alternative to the increased investment deduction, companies can opt to apply an R&D tax credit on qualifying R&D related investments. This tax credit amounts to the corporate income tax rate of the invested amount. It enables companies to show how the tax advantage directly reduces R&D operational costs.

### 3.2.4 Expatriate tax status in R&D

Foreign executives and researchers temporarily assigned to Belgium are eligible for:

- Tax free expatriation allowances of up to € 29,752 per year
- Tax-free reimbursement of installation costs, school fees etc.
- Business travel exclusion.

In addition, employers of expatriates can receive significant reductions in employment costs. The application process to claim these reductions is relatively straightforward.

### 3.2.5 Regional R&D subsidies

Regional institutions do grant businesses subsidies and corporate tax exemptions on premiums, capital or interest on tangible and intangible assets that support R&D activities. These exemptions apply to Belgium residents and foreign investors.

### 3.2.6 Accelerated depreciation

R&D expenses can either be deducted immediately as business expenses or be capitalised as an intangible fixed asset, subject to accelerated depreciation over a period of three years (instead of five years).

### 3.2.7 Structural funding for R&D projects (R&D grants)

As a federal state, Belgium is divided in three regions: the Brussels-Capital region, the Flemish region and the Walloon region.

Each region is responsible for stimulating R&D investment in its own territory through specific regional incentives. These can take the form of a loan, a grant, a recoverable grant, or reductions in social security contributions (mainly subsidising payroll expenses of qualified R&D personnel).

In addition the European Union offers a wide range of grants, many of which are distributed via these regional authorities.

For an in-depth overview of the various grants available in Belgium, consult the websites of the corresponding regional institutions:

- Brussels-Capital region - Brussels Institute for Research and Innovation ([www.irsib.irisnet.be](http://www.irsib.irisnet.be))
- Flemish region - Agentschap voor Innovatie door Wetenschap en Technologie ([www.iwt.be](http://www.iwt.be))
- Walloon region - Economie, Emploi et Recherche ([www.recherche-technologie.wallonie.be](http://www.recherche-technologie.wallonie.be)).

### 3.2.8 Flexible advance ruling practice in tax matters

Belgium's tax legislator is aware of the increasing importance of upfront legal certainty for existing and potential investors.

In recent years, Belgium has developed an efficient, transparent and flexible advance tax ruling practice. This enables investors to obtain upfront legal certainty on their specific transaction or specific situation, including cost plus rulings for contracted R&D services by a Belgian company.

### 3.3 Notional interest deduction

To reduce discrimination between equity financing and debt financing, Belgium introduced an unique notional interest deduction measure in 2006.

The 'deduction for risk capital' or 'notional interest deduction' (NID) provides a tax advantage to entrepreneurs who invest their personal capital in the company. This measure reduces the discrimination between funding with equity and funding with loans, as currently, interest paid is deductible for the borrowing company, while dividends paid are not.

The NID is a deductible amount that equals the fictitious interest cost on the adjusted equity capital. This tax deduction is available to all Belgian companies and permanent establishments and involves deducting tax against the cost of their capital.

To calculate the deductible amount of a company's equity, i.e. share capital, share premium and retained earnings, for Belgian GAAP purposes the equity is multiplied by a fixed percentage. The notional interest deduction rate varies annually. For 2014, the rate is 2.630%, increased by 0.5% to 3.24% for Small and Medium Sized Enterprises (SMEs).

### 3.4 Tax shelter regime for audio visual works

The Belgian Tax Shelter regime is a government-approved tax incentive designed to encourage the production of audio visual works.

This specific tax incentive allows companies providing financial backing for approved audio visual productions to benefit from a tax exemption of any retained taxable profits. It is worth up to 150% of the sums actually paid in relation to a concept agreement concluded with a Belgian production house. The upper investment limit is 50% of a company's retained profits, up to a ceiling cost of € 500,000.

In order to benefit from this tax exemption, a number of conditions must be met. If all conditions are thoroughly met, this temporary tax exemption may become definitive.

### 3.5 Tonnage tax regime

Belgian companies and Belgian branches of foreign companies that operate sea vessels sailing under the flag of Belgium, or another EU Member State, may apply tonnage tax. This is effectively an alternative method of calculating corporate income tax profits. Companies that transport goods or persons by sea can apply the tonnage tax on:

- International sea routes or
- Routes from and to installations at sea that are used for the exploration and extraction of natural resources and certain related activities.

The regime is granted for an initial period of 10 years, with an automatic renewal.

To qualify for the regime, a company must generally own the sea vessel or charter it under a bareboat agreement. A company may also create a separate business division and elect to apply this regime.

Companies or branches whose sole activity is the management of vessels and who are entrusted with the crew and technical management of vessels on behalf of a third-party owner, can also qualify for this tonnage tax regime. To qualify, they must bear full responsibility for the vessel's operation and have at least 75% of the managed vessels registered in the Belgian maritime register.

### 3.6 Dividend withholding tax exemption

The Belgian withholding tax exemption, which supports the EU Parent-Subsidiary Directive, is popular with investors.

Using Belgium as their holding location for investments in Europe enables corporate investors from treaty countries to repatriate European profits without paying dividend withholding tax.

Belgium has also implemented the EU Interest and Royalty Directive. Under this Directive, outbound interest and royalty payments are exempt from withholding tax provided the recipient is a related company and established in another EU Member State. This exemption also extends to Switzerland.



## 4. BUSINESS ORGANISATIONS AVAILABLE TO FOREIGNERS

A foreign investor can initiate commercial activities in Belgium through various legal entities, including:

- Through an independent agent or distributor
- Via a branch of a foreign company
- Establishing a Belgian company as a subsidiary
- Acquiring a controlling interest in an existing Belgian company.

### 4.1 Common company types

Several types of companies exist. The most common companies utilised by foreign investors include:

- 'Société Anonyme' (SA) or 'Naamloze Vennootschap' (NV), which is the equivalent of a public limited liability company
- 'Société Privée à Responsabilité Limitée' (SPRL) or 'Besloten Vennootschap met Beperkte Aansprakelijkheid' (BVBA), the equivalent of a private limited liability company.

For all of these company entities, shareholder liability is limited to their contribution.

The legal procedure for setting up a SA/NV or SPRL/BVBA in Belgium is:

- The founders deposit the initial capital (if the capital is subscribed in cash) with a bank, and the bank issues a standard certificate confirming that the amount is held in a blocked 'capital' account. The minimum amount of the capital deposited varies depending on the chosen company type.
- The founders must draw up a financial plan for the company, containing a description and justification for the amount of the initial capital. This plan must show that the initial capital will cover company operations for the first two years. The founders then sign the plan and file it with a notary.
- The Articles of Incorporation and the by-laws are signed by the founders, or their representatives, in the presence of a notary and authenticated by the notary. Following payment of the registration duty (if required), the notary records the basic documents at the local commercial court and submits a summary of the corporate charter. Minutes from the first shareholders' meeting must also be submitted at this time, outlining the election of the Board of Directors, together with minutes from the first Board of Directors' meeting when the chairperson and delegating management are appointed. This submission is published in the Annexes to the Belgian Official Gazette. After this stage the company will be issued its company number.
- In the final stage, before proceeding with business, the company registers with the Crossroad Bank of Companies and if applicable is issued a VAT number.

#### 4.1.1. Key features of a SPRL/ BVBA

The equivalent of a private limited company, the main features of the Société Privée à Responsabilité Limitée (SPRL) and Besloten Vennootschap met Beperkte Aansprakelijkheid (BVBA) are:

- Minimum share capital is € 18,550
- A single person can form a private limited-liability company
- Each manager has the power to act individually (the manager has the power to perform any actions that are deemed necessary or useful for the achievement of the company's objectives, except actions that the company Code reserves for the general assembly of shareholders)
- In principle, management tasks cannot be delegated to the day-to-day operational management body
- Dismissal is possible by the general meeting of shareholders, however when appointed in Articles of Association without a time limit, dismissal is only possible for a serious misconduct and would require a notary deed
- Profit shares are not possible
- Transfer of shares is restricted
- An interim dividend is not possible.

#### 4.1.2 Key features of a SA/NV

The equivalent of a public limited company, the main features of a Société Anonyme (SA) and Naamloze Vennootschap (NV) are:

- Minimum share capital is € 61.500
- A minimum of two shareholders
- Transfer of shares is, in principle, not restricted
- Profit shares are possible
- The management comprises a minimum of three directors (two directors are sufficient if there are only two shareholders), and these directors are appointed by the shareholders
- The director's mandate cannot last longer than six years, although the mandate can be renewed
- Dismissal is possible by the general meeting of shareholders
- Delegation of operational management decisions is possible
- An interim dividend is possible.

#### 4.2 Other company types

Aside from the NV/SA and the BVBA/SPRL company types featured in section 4.1, several other company entities exist.

### 4.2.1 Key features of a GCV/SCS (limited partnership)

The 'Gewone Commanditaire Vennootschap' (GCV), also known as 'La Société en Commandite Simple' (SCS) is a legal entity comprising two types of shareholders. This entity is formed by:

- One or more partners who are jointly and severally (proportionally) liable - they are known as the 'active/managing/general partners' (de werkende or beherende vennoten/les commandités) and
- One or more 'sleeping/limited' partners who only provide company funds (de stille vennoten/les commanditaires).

The sleeping partner's liability for the debt and losses of the company is limited to the amount of the funds contributed to the specific entity. It is forbidden for the sleeping partner to:

- Do management tasks, not even through power of proxy
- To represent the company to a third party.

If a sleeping partner acts as an active partner, they will become jointly and severally liable to third parties in relation to any professional commitments made. This rule applies even if the person's name appears in the company name and they have not participated in a specific commitment to a third party, or if the sleeping partner regularly manages the affairs of the GCV/SCS.

If all partners are active, the company will qualify as a general partnership.

With a GCV and SCS, there is no minimum capital and requirement for a notarial deed. It is possible to use a private deed to establish the entity.

### 4.2.2 Key features of a CVBA/SCRL (limited cooperative)

Another legal entity - the 'Coöperatieve Vennootschap met Beperkte Aansprakelijkheid (CVBA)', also commonly referred to as 'La Société Coöperative à Responsabilité Limitée (SCRL)', has a minimum number of shareholders. This type of entity requires at least three associates and their liability is limited to their personal capital contribution.

The corporation has the ability to vary the structure of its capital. There is a fixed and variable amount of the capital. The fixed social capital should be at least € 18,550 and at least € 6,200 must be paid up in full. Where the amount of the subscribed capital is greater than the minimum required by law, each share must be paid up to the extent of 25%.

A capital increase or a capital decrease for the fixed capital can be realised by:

- The general meeting of associates
- Modification of the by-laws.

For a CBVA/SCRL, a notarial deed is required. The founders must draw up a financial plan that justifies the fixed capital amount. As with public limited liability companies, the financial plan should be submitted to the notary public.

### 4.3 Partnerships

The following types of partnerships can be established in Belgium:

- General partnerships ('Société en Nom Collectif' /'Vennootschap Onder Firma', SNC/VOF) – this is a separate legal entity, whereby partners have joint and unlimited liability
- Transparent partnerships ('Maatschap' / Société Civile Professionnelle) are used by members of specific professions, such as doctors, attorneys and auditors, as well as for succession purposes. In principle, partners have unlimited joint liability.

### 4.4 Joint ventures

A joint venture generally involves cooperation on a project between two or more parties. There's a contract agreement, whereby the parties agree to share expenses or income, or both, derived from the project. The legal implications are determined in the joint venture contract, signed by all parties concerned.

### 4.5 European Economic Interest Grouping (EIG)

An EIG is a grouping established by two or more parties. Its sole aim is to facilitate or develop the economic activities of its members, or to improve/increase members' profits derived from these activities.

Although less common, the EIG can be used as a vehicle for cooperation in a number of areas, including:

- Lobbying
- Cooperation between law firms
- Joint purchasing of raw materials
- Advertising
- Provision of ancillary services in the context of franchise networks, research and development.

# 5. SETTING UP AND RUNNING BUSINESS ORGANISATIONS

## 5.1 Setting up a business organisation

### 5.1.1 Business environment

There are a number of legal recognised commercial entities that a foreign investor may choose to use to conduct business in Belgium (see section 4 for a brief description). Ultimately, the choice of entity will often depend on the nature of the business, shareholder objectives and the size of the initial investment.

### 5.1.2 Legal branch of a foreign corporation

No government approval is required for foreign companies to establish branches. However, depending on the activities, a business operation may require approval from the relevant governmental authorities.

#### Legal personality

A branch of a foreign corporation does not have a legal personality. Although it may constitute a separate economic entity, from a legal perspective it is merely an extension of the head office. Consequently, the head office is financially liable for any branch debts.

A branch is opened by decision of foreign company's Board of Directors. Since it is not a separate legal entity, the branch itself does not have any shareholders.

#### Share capital

Since a branch does not have a legal personality, the branch itself doesn't have any share capital. In practice, the financial resources of a branch will include funds provided by the head office, possibly complemented by external funding (e.g. bank loans).

#### Management

A legal representative manages a branch. These representatives can be a Belgian national or a foreign national. They do not need to be resident in Belgium. If desired, other officers can also be appointed for daily office management duties. Legal representatives bear the same liability as directors managing a subsidiary.

#### Language requirements

Belgium is a multilingual country. The place where a branch is located is of crucial importance, since it determines the company's official language. The official language in Flanders is Dutch, French in Wallonia and either Dutch or French in the bilingual Brussels region.

Apart from the legal set-up, an investor should take into account any specific compliance requirements, in particular the employment of personnel in Belgium.

### 5.1.3 Labour law

Belgium has different employment models, including fixed-term contracts, temporary employment and full-time or part-time jobs.

The legally permitted working time depends on the joint committee the company falls under. Although there are exceptions, in principle the maximum working hours a week is limited to 38/40 hours. Certain joint committees consider Saturday to be a normal working day.

Employees have the legal right to claim at least four weeks of paid vacation in a calendar year. The number of public holidays in Belgium varies from one federal state to another.

Belgian labour law does not discriminate against foreign employees working in Belgium. However, non-EU residents are required to have a work permit.

An employment contract can be terminated fairly easily under Belgian law. On the other hand, a downside of Belgian labour law is the relatively long notice periods that need to be granted to dismissed staff. These notice periods currently still vary for blue-collar and white-collar workers, depending a.o. upon the person's seniority, but should be harmonized in the future further to the unified statute for white and blue-collar workers introduced as of January 2014. In the case of dismissal by the employer, the employee is entitled to reduce the period of notice by giving 'counter-notice' of his or her own. The employee is also entitled to leave for seeking a new job. A collective dismissal is subject to specific regulations and depends on the size of the company.

#### **Law of Contract**

Belgian contract law offers investors a reliable framework for action. The principle of contractual freedom enables the conclusion of contracts with freely selectable contractual partners and the free determination of the subject matter of the contract, providing the current law is not infringed. Belgian Civil Code (BW) governs the basic contract structures. Contractually, the conditions applied by companies are relatively standard.

Contracts concluded according to Belgian law are typically short and simple in structure. Current legal regulations apply, unless otherwise stated in the contract.

#### **Commercial Law**

Belgian commercial law corresponds with international standards. Global trading practices and standard trading contractual clauses such as Incoterms (International Commercial Terms) are recognised. Global financing mechanisms for international trade, such as letters of credit and payment guarantees, also apply in Belgium.

#### **General information on litigation**

There is no case law in Belgium. This means that decisions made by courts are only binding for the litigants, and not other courts of law. Nonetheless, the decisions made by the superior courts are used as guidelines.

In Belgium, there are no so-called 'pre-trials', such as those recognised in the United States. If the court orders a hearing of evidence, it is, as a rule, up to each party to prove the facts of their specific case.

Litigation costs in Belgium can be quite high depending on the barrister chosen by the company. In general, the costs are partially paid by the party who loses the legal case. The costs are shared in the event of partial success of each party.

## 5.2 Running a business organisation

### 5.2.1 Management

A public limited liability company (Société Anonyme (SA) or Naamloze Vennootschap (NV)), is managed by a Board of Directors, which must have at least three members. If the subsidiary only has two shareholders, the Board of Directors may have just two members. These members can be Belgian nationals, foreign nationals or companies. If required, the directors can appoint a managing director and possibly other officers to undertake the company's operational management duties.

A legal representative manages a branch office. This representative can be a Belgian national or a foreign national, and does not need to be domiciled in Belgium. If required, other officers can be appointed to oversee day-to-day office tasks.

### 5.2.2 BEGAAP accounting and filing requirements

The Belgian accounting law applies to operations of a subsidiary or a branch.

A Belgian subsidiary must organise an accounting system that conforms to the Belgian Minimum Standard Chart of Accounts and must prepare annual accounts. These annual accounts have to be filed with the National Bank of Belgium and can be accessed by the public.

A branch office must also organise an accounting system that conforms to the Belgian Minimum Standard Chart of Accounts and must to prepare annual accounts. The exception is if the branch office does not earn income itself and is completely financed by the head office. These annual 'branch' accounts do not have to be filed with the National Bank of Belgium. However, the annual accounts of the head office, which contains the consolidated results from all branches, must be filed with the National Bank of Belgium. Before filing, they must be translated into either French or Dutch. Members of the public can access these consolidated branch accounts.

### 5.2.3 Audit requirements

If a company employs more than 100 employees, the appointment of a statutory auditor is mandatory. A company must appoint one or more accredited statutory auditors if two or more of the following three thresholds are exceeded:

- Annual Turnover: € 7,300,000.00
- Balance sheet total: € 3,650,000.00
- Yearly average of employees: 50

These three thresholds must be calculated on a consolidated basis. This means taking into account the figures of the company itself and also the figures of all its affiliated undertakings.

In addition, if the company is part of a group that has to establish and file consolidated accounts, the company is obliged to appoint a statutory auditor. The auditor is entrusted with:

- The audit of the financial situation
- The annual accounts and the true and fair nature of the transactions reflected in the annual accounts based on the regulations of the Company Code and
- The stipulations of the company's Articles of Association.

When no statutory auditor is appointed, each shareholder individually has the powers of investigation and auditing of a statutory auditor. For this purpose, an accountant can represent the shareholder.

A branch office does not have to appoint a statutory auditor unless its average number of employees exceeds 100. For this computation, only the employees of the branch itself have to be taken into account.

#### **5.2.4 Reporting formalities**

A company is required to hold at least one general shareholders' meeting per year. This meeting is to approve the annual accounts of the preceding financial year and, if needed, to deliberate other corporate issues (e.g. the appointment or discharge of directors and the statutory auditor.)

Once the general shareholders' meeting has approved the annual accounts, they have to be filed with the National Bank of Belgium. A company must also file an annual tax return and, depending on its turnover, a quarterly or monthly VAT return.

According to Belgian Company Law, a Belgian branch must annually deposit with the National Bank of Belgium the annual financial statements of the foreign company, as well as the foreign company's annual consolidated accounts in the form under which these statements are drawn up, controlled, and published according to the law of incorporation of the parent company. This rule must be complied with within a month after the general shareholders' meeting of the parent company and at the latest within seven months after the parent company's closing of the financial year in question. The statements deposited must be translated into one of the official languages of Belgium (i.e. Dutch, French or German) depending on the location of the branch (see language requirements in section 5.1.2).

The branch must also file an annual tax return and, depending on its turnover, a quarterly or monthly VAT return.

#### **5.2.5 Retention of documents**

A company and a branch office are both obliged to retain certain documents during statutory limitation periods. The rules regarding the retention of documents are the same for a company as a branch office.

### **5.3 Dissolution of a business organisation**

A legal entity may be dissolved following a voluntary decision by the shareholders or partners. The objective of a voluntary liquidation is to terminate a business by selling all assets in order to settle any creditor claims. Any remaining funds can then be distributed to the shareholders or partners.



# 6. CORPORATE TAXES AND SOCIAL CHARGES

## 6.1 Corporate Income Tax (CIT)

### 6.1.1 Taxable entities

Only entities with legal personality are subject to CIT in Belgium. Taxable entities include:

- Resident companies
- Associations
- Cooperatives
- Establishments and organisations engaged in a business or other profit-making activities.
- Limited partnerships and partnerships limited by shares also have a legal personality and are therefore also subject to CIT.

The most popular forms of legal entities in Belgium are the corporation (SA/NV) and the limited liability company (SPRL/BVBA), as discussed in section 4.1.

### 6.1.2 Taxable profit

A resident company is liable to Belgian corporate tax on its worldwide profits. However, profits derived from a foreign branch are exempt from CIT if the branch is established in a country that has concluded a double tax treaty with Belgium. Profits derived from branches in non-treaty countries are taxed at the normal CIT rate.

Foreign companies conducting business activities in Belgium through a registered branch are subject to non-resident CIT on their Belgian profits only.

Taxable profit is calculated using the total in retained earnings, taxable timing differences, non-deductible expenses (e.g. Belgian income taxes, regional taxes, car expenses, restaurant expenses, penalties, etc.) and the dividends distributed to shareholder(s).

Expenses that cannot be included within this taxable profit calculation include:

- Private expenses
- Fines and penalties
- Income taxes
- Occupational expenses deemed to exceed unreasonable requirements
- Expenses relating to clothing, with the exception of special professional clothing
- 31% of restaurant expenses
- 50% of entertainment allowances and business gifts
- Company car expenses: the current deduction varies from 50% to 100%, depending on the CO2 emission level and the fuel type (120% for electric cars). Up to 75% of fuel costs are deductible
- Social benefits granted to personnel (health insurance, meal vouchers, etc.)
- Gifts in cash.

### 6.1.3 Depreciation and amortisation

Depreciation and amortisation are based on the residual value and anticipated useful economic life of fixed assets.

A Belgian company must compute the depreciation pro rata starting from the day of acquisition. Accessory costs relating to the acquisition (e.g. non-deductible VAT) must be depreciated at the same rate as the acquisition value of the asset. A full depreciation annuity in the year during which the assets are acquired is only considered for qualifying small and medium sized companies.

Methods normally accepted in Belgium are the straight-line and declining balance method.

Acceptable rates are typically:

- Office buildings (3%)
- Industrial buildings (4% to 5%)
- Industrial machinery and equipment (10% or 33%)
- Office furniture and equipment (10% to 15%)
- Motor vehicles (20%)
- Electronic data processing equipment (20% to 50%).

Research and development expenses should be depreciated over at least three years.

The annual depreciation rate under the declining balance method may not exceed 40% of the acquisition value. It cannot be applied to vehicles or assets when the 'right to use' is granted to a third party by a taxpayer entitled to depreciate the asset for tax purposes.

## 6.2 CIT rates

The standard CIT rate in Belgium is 33.99%, including a surcharge of 3%. Small and medium-sized companies could benefit from reduced progressive tax rates if certain conditions are met:

- Company is not a holding company
- Company is not owned 50% or more by one or more companies
- Company does not distribute dividends during the year that exceed 13% of the paid-up capital at the start of the year
- Profits of the company do not exceed € 322,500
- Company pays an annual taxable income of at least € 36,000 to at least one director
- Company does not belong to a group of companies with an approved Belgian coordination centre

The reduced tax rates are:

Taxable Profit (€)	Tax Rate %
€ 0 to 25,000	24.98% (24.25% + 3% surcharge)
€ 25,001 to 90,000	31.93% (31.00% + 3% surcharge)
€ 90,001 to 322,500	35.54% (34.50% + 3% surcharge)

### 6.3 Secret commission tax

Certain professional expenses (fees, commissions, salary expenses and benefits in kind that qualify as professional income in the hands of the beneficiary) must be reported by taxpayers by filing separate tax forms 281.50.

A secret commissions tax of 309% is applied in case these items are not properly documented and reported to the relevant tax authorities.

### 6.4 Tax incentives

Various investment deductions exist for R&D related activities, amongst others, in Belgium. Please refer to chapter 3 for a more detailed overview of these incentives.

Under the notional interest deduction (NID) regime, Belgian companies are entitled to deduct a deemed interest expense against the net equity.

Under the Patent Income Deduction (PID) regime, Belgian companies may deduct 80% of income from royalties and income deemed to be sourced from patented intellectual property.

Belgium is also well known for its specific tax shelter regime designed to encourage investment in the production of audio visual works (see section 3.4).

### 6.5 Capital gains tax

Capital gains are normally treated as ordinary business income and are taxable at the normal corporation tax rates.

However specific exceptions apply, such as:

- Capital gains on shares qualifying for the Belgian participation exemption (a.o. a 1 year holding requirement)
- The temporary exemption regime for capital gains on fixed assets held for more than five years subject to specific re-investment conditions made within defined time limits (amongst others).

The capital gain exemption regime on shares has undergone several significant changes in recent years as result of recent budgetary measures, so every investor is advised to consult a local tax advisor regarding the specific conditions applied under Belgian tax law.

### 6.6 Tax losses

Tax losses can be carried forward without time limitation for tax purposes by the entity that incurred the losses. Under Belgian tax law, there is no carry-back of losses.

A company cannot carry forward its tax losses if there is a change of control of the company, unless the change of control can be justified with legitimate financial or economic reasons. Also, tax losses may not be offset against profits derived from abnormal or gratuitous advantages.

In cases of tax-neutral reorganisations (merger, split, etc.), specific tax loss limitation rules may apply.

Tax losses may not be offset against income from abnormal or gratuitous advantages received from related parties.

## 6.7 Dividend income taxation

Dividends received by resident companies are normally fully taxable at the usual CIT rate of 33.99% unless the Belgian participation exemption regime (i.e. the 95% Dividend Received Deduction regime) applies.

Specifically, if the 95% DRD can be invoked, only 5% of the dividend income is subject to Belgian CIT at 33.99%. This could mean an effective tax burden of 1.6995%, unless there are tax-deductible items (e.g. interest expenses) to further reduce the 5% tax basis.

The 95% DRD for dividend income can only be claimed if these specific conditions are fulfilled:

- The dividend is attributed by a company in which the beneficiary has a minimum shareholding of 10%, or with an acquisition value of at least € 2,500,000 at the moment the dividends are attributed or made payable (a minimum shareholding condition).
- The beneficiary of the dividend must have held the full legal ownership of the underlying shares for an uninterrupted period of at least 12 months before the dividend distribution. Nevertheless, it is possible to commit to hold the shares for a minimum period of 12 months should the participation not have been held for 12 months at the moment of dividend distribution.
- The company attributes the dividend, which is subject to a corporate tax equivalent to the Belgian corporate tax regime.

The DRD-regime does not apply if the dividend is paid by a:

- Tax haven company
- Financial, treasury or investment company not normally taxed
- Company receiving offshore income not normally taxed
- Company with foreign branches receiving income not normally taxed
- Intermediary company, other than an investment company.

## 6.8 Withholding taxes

### 6.8.1 Dividends

Belgium applies a domestic withholding tax (WHT) rate of 25% on dividends.

For small and medium-sized companies (SMEs), a reduced withholding tax rate on dividends of 20% or 15% (instead of the general withholding tax rate of 25%) has been introduced. The 20% or 15% withholding tax is only applicable on dividend distributions for new ordinary shares originating from cash contributions made as from 1 July 2013. Various transitional measures apply, as well as specific anti-abuse measures

Also, the 25% rate can often be reduced in a tax treaty situation or under the EU Parent-Subsidiary Directive conditions, as implemented into Belgian domestic law.

A WHT exemption may be available for dividends paid by resident subsidiaries to qualifying tax treaty parent companies if both the subsidiary and the parent company are subject to Belgian CIT. In addition to this condition, the parent company must also hold 10% of the capital in the subsidiary and the parent company's minimum shareholding should have been held for an uninterrupted period of one year.

Important to note is that as from tax year 2014, 'large companies' may be subject to a fairness tax on their distributed dividends. The fairness tax is a separate assessment at a rate of 5,15% (5% increased with 3% crisis surtax) borne by the company distributing the dividends. Hence, it is not a withholding tax borne by the beneficiary of the dividend.

The fairness tax is not applicable to SMEs defined by article 15 of the Company Law Code. Besides large companies, also Belgian branches are in scope of the fairness tax.

Liquidation proceeds are currently subject to a WHT levied at a 10% rate, albeit that this rate will be increased to 25% as of 1 October 2014 (a transitory measure applies). Like dividend distributions, the same tax treaty reductions or EU exemptions apply.

### **6.8.2 Interest**

Interest is subject to a WHT rate of 25%. This rate can often be reduced under a tax treaty or under the EU Interest/Royalty Directive conditions, as implemented into Belgian domestic law.

Specific exemptions may apply for registered bonds, mortgage loans on Belgian immovable property and bond interest paid by non-residents (amongst others).

### **6.8.3 Royalties**

The WHT rate on royalties is calculated on the gross amount minus expenses, and is equal to 25%. This rate can often be reduced under a tax treaty or under the EU Interest/Royalty Directive conditions, as implemented into Belgian domestic law.

## **6.9 Branch profits taxation**

There is no separate branch profits tax in Belgium.

Trading profits and capital gains of the Belgian branch of a foreign company are calculated and taxed on the same basis as those for a Belgian resident company.

## 6.10 Anti-avoidance rules

### 6.10.1 General anti-abuse provisions

Belgian tax law recently introduced more stringent general anti-abuse provisions under art. 344, § 1 in the Belgian Income Tax Code (BITC), enabling the Belgian tax authorities to combat tax avoidance more efficiently. In effect, these provisions now render a legal act or a series of legal acts in opposable to the tax authorities when they can establish the existence of 'abuse of tax law'.

This updated tax legislation should be considered in the light of the EU concept of 'wholly artificial arrangements'.

Specific anti-abuse measures might restrict the tax deductibility of payments to tax haven countries.

### 6.10.2 Transfer Pricing (TP)

Transfer pricing rules in Belgium are based on OECD principles, implying that related party transactions should comply with the arm's length principle in Belgium. If they don't, the Belgian tax authorities have the legal means to adjust upwards the taxable profit of a Belgian company.

No specific TP disclosure rules exist under Belgian tax law. However, Belgian companies are urged in the administrative guidelines issued by the tax authorities to set up TP documentation in order to avoid in-depth TP audits.

### 6.10.3 Debt-to-equity ratio requirements (thin capitalisation)

A 1:1 thin capitalisation ratio exists in Belgium and applies to loans from certain company shareholders or directors.

A 5:1 thin cap/debt-to-equity rule exists for loans granted by 'related' parties or by tax haven companies to a Belgian company. If a loan qualifies as 'related party' loan, the portion of the accrued interest will be disallowed to the extent that it exceeds the 5:1 legal limit: e.g. the amount of 'debt' exceeds the 'equity' by five times.

Apart from the specified limitations shown above, the interest rate applied must be a market rate.

### 6.10.4 Tax haven disclosure requirements

Payments for transactions with entities resident in tax haven countries, which exceed an amount of € 100,000 on an annual basis, must be disclosed in a special form that accompanies the tax return. These transactions will only be tax deductible if they relate to 'real and genuine' transactions, rather than artificial arrangements.

### 6.10.5 Controlled foreign company

There are no CFC-rules in Belgium.

## 6.11 Tax compliance

Companies subject to corporate tax have to file an annual corporate tax return at least one month after the date of approval of the annual accounts by the annual shareholders' meeting, but no later than six months after the end of the financial year in question.

In practice, the tax authorities may grant an extension of the filing date.

Belgium does not permit the filing of consolidated tax returns.

## 6.12 Wages and social security

### 6.12.1 Social security contributions

The most important components of wage costs for Belgian employers are the (Belgian) gross wage and the employer's social security contributions.

The Belgian social security system applies to employees (including foreigners) employed in Belgium whose employer is established in Belgium or, if it is established abroad, has a place of business in Belgium to which the employees have been transferred. For EU nationals, the EEA and Switzerland, the EU Regulations 83/2004 and 987/2009 apply and overrule the Belgian social security legislation. In addition, bilateral treaties regarding the application of the social security scheme should also be verified (e.g. Totalization Agreement with USA, Australia, etc.).

Based on the European regulations and bilateral treaties, employees or self-employed persons may remain subject to the social security system of their home country for a limited period, depending on circumstances at that time.

Any (foreign or Belgian) company employing Belgian workers subject to the Belgian social security scheme has to register with the Belgian social security authorities.

The National Office for Social Security (NOSS) collects the social security contributions. Belgium has a cohesive social security system. The employers and employees finance it. The employer pays these contributions to the NOSS - both the employee's contribution deducted from the wage, as well as the employer's own contribution.

The employer should file a quarterly social security declaration electronically to NOSS. When filing the employer states the total amount of social security contributions due. Payments, in principle, are made each quarter. However, larger companies must transfer the social security contributions on a monthly basis.

The most important social contributions made by the employer are the:

- Employer's social security contribution,
- Premium for working accident insurance
- Contributions to the socio-economic security funds.

The employer's social security contribution differs for workers and employees. The contributions are calculated based on gross wages (for workers it's calculated against 108% of their gross wage and for employees on 100%).

Employer contributions equal approximately:

- 40.58% of the gross salary (x 1.08) for blue-collar (manual) employees
- 34.58% of the gross salary of white-collar (professional and administrative) employees.

Companies with fewer than 20 employees pay slightly less. The social security contributions are due on the gross salary (without limit). Certain salary elements are subject to a special contribution (e.g. the CO2 solidarity contribution for the private use of a company car or the contribution of 8.86% due on the employer's group insurance contribution).

The employee social security contributions, based on employee's salary, amount to 13.07%.

Each employee or worker is also liable to pay a special social security contribution on a monthly basis, which is limited.

Belgian social security contributions are tax deductible.

### **6.12.2 Wage taxes**

Wage tax or personal income tax is withheld at source. In other words, the employer withholds the wage tax (personal income tax) before paying the salary to the employees and transfers the tax withheld to the Belgian Tax Authority. These amounts are defined as advanced income tax payment and are offset against the final amount of income tax that the individual is liable for.

Belgium has concluded double tax treaties with a number of countries. These guidelines set out guidelines which of the contracting states is entitled to levy personal income tax in order to avoid a double taxation on the same taxable income.

Partial professional withholding tax exemptions are available for certain types of employees (e.g. researchers, sportsmen) or employment (e.g. overtime, night work, shift work, etc.).

### **6.12.3 Other employer costs**

Aside from wage costs and social contributions, several other costs should also be considered:

Every employer is obligated to become a member of an external service for prevention and protection of the employees. Certain employees and certain professions require a periodical medical examination.

As the employer should, in principle, affiliate with a payroll service provider, the management costs for the administration of the wages also have to be taken into consideration.

As part of a salary package, an employer may have to provide some additional employee benefits, e.g. compensation for transportation costs to and from work, meal vouchers, group insurance, etc.

Some benefits are submitted as social security contributions, e.g. company car, mobile phone, group insurance, etc.

### **6.12.4 Self-employed persons**

For self-employed persons, Belgian social security contributions are calculated using earned income for the third year prior to the year of payment. These earnings are then adjusted for inflation, based on the consumer price index. There are different contributions, depending on the principal or nature of the professional activity.

Social security contributions for self-employed persons are due on a quarterly basis in respect of the principal activity, but are capped. Minimum quarterly prepayments should be made in the first three years. From the fourth year, the standard minimum contribution applies. Belgian social security contributions for self-employed persons are tax deductible.



## **6.13 Other local enterprise taxes**

### **6.13.1 Real estate property tax**

A tax is levied on immovable property located in Belgium and is calculated as a percentage of the notional rental value of the property. The rate varies depending on the region in which the property is located (the rate is 1.25% in the Brussels region). Local surcharges apply, depending on the municipality where the property is located.

### **6.13.2 Stamp duty**

Generally, no stamp duty applies. This is subject to certain exceptions, such as the stock exchange tax or transactions in public securities and other financial instruments.

### **6.13.3 Real estate transfer taxes**

Transfer taxes apply to the transfer and leasing of real estate located in Belgium, at rates ranging from 2.0 % to 12.5% (depending on the region in which the property is located).

# 7. PERSONAL TAXATION

## 7.1 Tax residence

Belgian internal tax law provides two criteria whereby a person could be considered to be a Belgian tax resident, for example individuals who have established their domicile or the seat of their fortune in Belgium. The place of residence is normally governed by a number of factual criteria and is generally defined as the place where an individual has its permanent home.

An individual is considered a resident of Belgium if their main home or their centre of economic interests is in Belgium. An individual is presumed to be a resident of Belgium when registered in the civil register (rebuttable presumption). Married persons are deemed to be residents of Belgium if their household is established in Belgium (irrefutable presumption).

In principle, tax residents are taxed in Belgium on their worldwide income. Under its double taxation treaties, Belgium relieves income from double taxation by applying the exemption with progression reserve (i.e. the foreign income is not taxed in Belgium, but takes into account and applies a tax rate based on the Belgian source income). Income received from non-treaty countries is taxed in Belgium. However, the normal tax rate on individual income tax is reduced by 50%.

Non-residents of Belgium are, in principle, only taxed on Belgian-sourced income.

## 7.2 Taxable income

### 7.2.1 General information

The taxable income of an individual taxpayer is equal to the sum of the net income less related expenses in each of the following income categories:

- Income from real estate property (developed or undeveloped)
- Income from movable property, including dividends, interests and royalties
- Professional income, including business profits, professional income, employment income and pension income
- Miscellaneous income.

### 7.2.2 Income from real estate property

The taxable income applied to real estate property depends on the purpose and how the real estate is used.

Individuals that own real estate located in Belgium are subject to income tax based on the indexed deemed rental income amount of the property, which is the deemed annual net rental value of the property. The taxable basis is the cadastral income (i.e. a notional annual rental income value based on the size, characteristics and state of the building, as well as its location).

Other than a taxpayer's personal residence, the indexed deemed rental income increases by 40% for immovable property. If the property is rented out to a tenant who uses it for business purposes, the taxable income of the owner equals the net rental income.

If the owner uses the real estate for business purposes, the real estate income is deemed to be included in the business income.

Immovable property income is taxed at a progressive tax rate. This varies from between 25% and 50%, and also increases when communal taxes (cf. infra) are applied.

Capital gains on real estate realised by individuals are, in principle, not taxable.

Certain interest expenses specifically incurred to acquire or to maintain the immovable property are also deductible from the rental income.

### 7.2.3 Income from movable property

Dividends, interest and royalty income sourced in Belgium is subject to Belgian withholding taxes:

- Interest revenues are, in principle, subject to a 25% tax rate.
- For dividends, a general 25% rate applies (but possibly reduced rates and/or 10% for liquidation proceeds until 1 October 2014).
- Royalty income is, in principle also subject to a 25% withholding tax rate. However, royalty related expenses are tax deductible and may reduced the taxation basis.

The effective withholding tax is often reduced under domestic law, Belgium's double tax treaties and/or EU Directives.

Equal rates apply for foreign-sourced movable income.

Capital gains on shares are, in principle, not taxable.

### 7.2.4 Professional income

Earned income includes wages, salaries and other remuneration received from a professional activity. There are six categories of occupational earnings:

1. Employee salaries and wages
2. Company directors' emoluments (salary, fee or profit)
3. Profits from agricultural, industrial and commercial activities
4. Earnings from a regulated profession (certain knowledge and non trade-based service professions, e.g. medical, legal, etc.)
5. Profits and proceeds from previous occupational activities
6. Replacement income - pensions, early retirement payments, unemployment benefit, health insurance benefits, etc.

#### **Employee salaries and wages**

Salaries, wages, remuneration, proceeds and replacement income are taxed at the time they are paid or attributed (i.e. cash-basis taxation), whereas profits are taxed when they accrue (i.e. accrual-basis taxation).

The taxable (net) income is determined after deducting social security contributions and deducting actual or lump-sum professional expenses (subject to legal limitations for car costs, fuel, restaurant costs, etc.).

Several types of earned income are not taxed at normal progressive tax rates but at separate flat rates, for example redundancy payments and pension capital sums.

## Benefits in kind

Benefits in kind are an alternative way of compensating employees and optimising their salary package. The most commonly granted benefits are the attribution of a company car, communication and technology devices, internet connection, stock options, etc.

The taxable value of these benefits in kind is usually determined on a more favourable lump sum amount, which is often lower than the actual value of the benefit.

Belgium has a favourable taxation and social security regime applicable to certain types of equity based compensation (e.g. warrants, stock options, granting of shares at a reduced price, etc.).

## Costs proper to the employer

All income borne directly and indirectly from the accomplishment of an employment for the benefit of an employer, in principle generates a taxable remuneration. A significant exception to the general principle is created for lump sum allowances, which the employee receives as a reimbursement of actual costs proper to the employer. These allowances are not considered as a taxable 'wage', nor are they subject to Belgian social security contributions for employees.

Common examples of 'costs proper to the employer' are:

- Use of a private car for transport, that is in service of the employer
- Costs made during a business trip (meals, parking, road taxes, taxi, hotel accommodation, etc.)
- Telephone costs
- Representation costs
- Costs related to home meetings with business partners, etc.

The reimbursement of such costs (proper to the employer) can be done through:

1. Reimbursement upon presentation of expense notes and the underlying documents (e.g. invoices, receipts)
2. Reimbursement on a lump sum basis.

If using the lump-sum basis, to avoid a possible duplication of reimbursements of expenses proper to the employer an advance ruling with the Belgian tax authorities justifying the lump sum amounts could be requested.

## Pension income

Typically, pension income is taxed as salary income. This means it is subject to the normal progressive tax rates, which increases incrementally with communal taxes. However, a tax credit is granted, providing a certain threshold is not exceeded.

## Directors' remuneration

Fees received by (self-employed) directors, whether paid as fixed remuneration or as an allocation of part of the profits, are taxed as earned income in the hands of the recipient.

From the director's income, only a deduction of 3% of their professional fees can be deducted as lump-sum professional expenses (with a maximum threshold per year).

## Business and professional income

Business and professional income are taxed similarly to salary income at the normal progressive tax rates, increasing incrementally with communal taxes.

Expenses incurred to acquire, secure and maintain taxable income are generally tax deductible.

## Investment income and capital gains

See immovable income and movable income.

Capital gains realised by individuals exercising a business are taxed as profits.

### 7.2.5 Miscellaneous income

This category of taxable income includes all income that's not earned by performing professional work. In principle, miscellaneous income is taxed separately at a specific tax rate and the rates applied will depend upon the type of income.

The most commonly used payments that qualify as miscellaneous income are:

- Maintenance payments (80%)
- Prizes and grants
- Capital gains from real estate property if disposal occurs less than five years after the acquisition of the property (exemption for private dwelling)
- Capital gains from undeveloped real estate if disposal occurs less than eight years after the acquisition of the property.

Capital gains realised by individual Belgian shareholders on the disposal of the company's shares (outside of its professional occupation) are, in principle, not taxable.

- However, they may be taxable when gains on the disposal of a 'substantial interest' (over 25%) of a Belgian company to a foreign non EU-company. The tax rate in this instance is 16.5 % (increased with local taxes).
- 'Speculative' gains on the transfer of company shares could be taxed at the rate of 33 %, unless the gains result from a normal act of management taken by a reasonable person (bonus pater familias) with regard to private assets.

## 7.3 Personal tax rates

### 7.3.1 General information

Individual income tax rates for the income year 2013 (assessment year 2014) are:

Taxable income (€)		Rate
From	To	%
0	8,590	25
8,591	12,220	30
12,221	20,370	40
20,371	37,330	45
37,330	...	50

Couples (legal cohabitants and married persons) file a joint tax return. However, they are taxed separately on individual earned income. Factual cohabitants (i.e. living together without formal declaration before the civil servant in the local community) are considered as single tax payers.

These tax rates will typically increase as a result of communal taxes. For non-residents, the communal tax amounts to 7%. For Belgian residents, communal taxes vary from between 0.0 % and 9.0 %.

Employee wages and director remuneration are subject to professional withholding tax at source, withheld by the employer. This professional withholding tax should be considered as an advance payment, which can be offset against the final tax liability when filing the tax return. Any excess pre-paid tax following the final filing of the tax return is refundable.

Entrepreneurs, self-employed persons and individuals that are not subject to professional withholding tax rules should make quarterly advance payments. To avoid a tax increase, these quarterly payments are based on their estimated tax liability during the income year.

### 7.3.2 Personal deductions, allowances and credits

Providing specific conditions are met, each resident taxpayer is entitled to the following personal deductions, allowances and credits (see below). For certain categories of Belgian non-residents (i.e. non-residents without an abode in Belgium), certain personal deductions or allowances cannot be applied. However, certain non-residents without an abode in Belgium, providing certain conditions are met, are assimilated with non-residents that have an abode in Belgium and are entitled to limited personal deductions.

#### Personal deductions

The most common deductions include:

- alimony payments
- interest on a mortgage loan, etc.

Depending on the type of expense, specific conditions regarding the calculation of the deduction can be taken into account.

## Personal allowances

All taxpayers are entitled to a basic tax-free amount of € 7,070 per year. However, a higher tax-free amount may be applied to lower income taxpayers and disabled persons.

The basic tax-free allowance can be increased for dependent persons.

A specific personal allowance is granted to the taxpayer's spouse.

These allowances also apply to Belgian non-residents, providing they have an abode in Belgium during the entire year to which the income relates.

## Tax credits

Taxpayers can also be granted tax credits if certain conditions are fulfilled.

The most common tax credits apply to the following situations:

- low income
- stock purchase by an employee in the company where they are employed
- long-term pension savings and life insurance schemes
- certain energy saving expenditures
- redemption of capital on mortgage loans under certain conditions
- expenditures to protect a dwelling from fire and burglary
- child care expenses
- charitable donations to approved organisations in Belgium and in the European Economic Area, etc.

## 7.4 Tax compliance

For individuals, the tax year is the calendar year. The assessment year is the year following the income year.

Belgian non-resident individual income tax returns should be filed annually. In principle, the filing should be done prior to 30 June in the relevant assessment year. If the tax return is being prepared and filed by a chartered tax consultant, this due date may be extended.

The Belgian tax authority should send the tax assessment notice before 30 June in the year following the assessment year. Any tax due must be paid within two months following the date of submitting the tax assessment.

If there's a disagreement with a tax assessment notice, a tax claim should be filed within six months following the tax assessment notice. If the competent tax director has made no decision, a legal court procedure can be started.

## 7.5 Other taxes on income

### 7.5.1 Communal tax

Additional communal taxes are due on top of Belgian personal income tax. For non-residents, the communal tax is fixed at 7%.

For Belgian residents, the communal tax varies from between 0% and 9% (averaging around 7%).

Movable income originating from within the EEA that was not collected in Belgium or via an intermediary located in Belgium is not subject to additional communal taxes.

Besides the communal tax, each commune can, in principle and within a general framework, impose other taxes (e.g. tax on a second home, tax on commercial activities, etc.).

### 7.5.2 Immovable withholding tax

An immovable withholding tax is charged to all property owners. This property tax is a percentage of the deemed rental income (known as cadastral income), and varies depending on the region where the immovable property is located. For the Flemish region, the immovable withholding tax is currently equal to 2.5%. It is currently 1.25% in the Walloon and Brussels regions. This tax increases with communal and provincial taxes.

## 7.6 Cross border employment

### 7.6.1 LIMOSA

As of 1 April 2007, Belgium introduced a preliminary registration requirement called 'LIMOSA', aimed at foreigners intending to perform professional activities on Belgian territory.

LIMOSA-registration is necessary for all employees, self employed persons, and (self employed) apprentices who temporarily or partially come to work in Belgium and who are, in principle, not subject to the Belgian social security scheme.

In order to avoid potential administrative fines and penal sanctions, the LIMOSA-registration should be made prior to arrival in Belgium. Whilst there are a number of exemptions, depending on the reason of the person's arrival in Belgium and/or the duration of stay, these strict registration requirements should, nevertheless, be taken into account by foreign investors.

### 7.6.2 Expatriate individuals

Belgium offers a very favourable tax regime for expatriates coming to Belgium. Under this special tax status, non-Belgian executives and employees who 'temporarily' carry out work in Belgium qualify for special tax benefits.

Qualifying individuals are treated as non-residents for Belgian tax purposes and are liable to Belgian income tax only on their Belgian-sourced income (i.e. earned income, Belgian investment income and income from real estate located in Belgium). All non-Belgian sourced income is not considered as taxable income in Belgium. In order to benefit from this special tax status, a special application should be made and sent to the Belgian tax authority within six months following the month of arrival in Belgium, and should be approved by the tax authority.



This special tax status essentially provides two main benefits that are relevant for calculating taxable income:

1. There is a number of tax free allowances deemed to cover the reasonable additional expenses associated with being employed in Belgium. These activities are tax-exempt in Belgium up to an annual limit of € 11,250, or € 29.750 in the case of eligible employees working at control and coordination offices, research centres and scientific laboratories.
2. Individuals qualifying for the special tax status are only taxed on the part of their income and remuneration for activities actually carried out in Belgium. The part of their worldwide income that corresponds with the days worked outside Belgium is totally exempt from Belgian income tax (i.e. through the application of a foreign travel exclusion).

When foreign nationals are employed in Belgium, formalities regarding social security, immigration, labour law and income taxes must be taken into account.

### 7.6.3 Immigration

Residents from EEA (European Economic Area) countries and non-EEA countries can be granted permission to enter Belgium for a short period – a maximum of three months.

Residents of the EEA and Switzerland may come to work in Belgium without prior notification. Non-EEA nationals require a work permit (for employees) or a professional card (for self-employed) to commence working in Belgium. Work permits are generally restricted to qualified individuals, unless there's a shortage or foreseeable shortage for certain types of workers. When coming to work in Belgium, the minimum salary must be respected.

Individuals that would like to remain in Belgium after this three-month period must apply for a permanent residence permit and register with the local commune. A resident should carry his or her identity card at all times. This proves, depending on the type of card, whether he/she is a Belgian national, a European National or a non-EU national. The process for the application for a residence visa and/or a work permit or professional card depends on the type and the person's nationality.

## 8. DOUBLE TAXATION AGREEMENTS

Belgium has as a broad tax treaty network. Most treaties follow the OECD model treaty.

The primary purpose of double taxation agreements is to allocate the taxing rights on income arising from international transactions between the countries involved to one country and to avoid double taxation.

For Belgian residents, Belgium generally uses the exemption-with-progression method for avoiding double taxation. The credit method is used for interest and royalty income.

If no tax treaty is available, certain foreign-sourced income (such as employment or business income, and some miscellaneous income) may be taxed at 50% of the normal Belgian resident income tax rate.

The Belgian government's website Fisconet - [www.fisconet.fgov.be](http://www.fisconet.fgov.be) - (available in Dutch and French languages) lists the countries that have concluded a tax treaty with Belgium.

# 9. VALUE ADDED TAX (VAT) AND OTHER INDIRECT TAXES

## 9.1 Value Added Tax (VAT)

### 9.1.1 VAT definition

VAT is a tax on goods and services that is eventually borne by the final consumer. It is levied in successive stages, namely at each transaction in the process of production and distribution. Considering that at each stage of this process the tax paid on the inputs can be deducted, only the added value is taxed at that stage. VAT is therefore a non-cascading tax on consumption.

VAT is a proportional tax on the sales price, excluding VAT. The rates applied may, however, vary according to the nature of the goods or services that are being taxed.

Belgian VAT law, as with VAT law in other EU countries, is based on the EU VAT Directive (Council Directive 2006/112/EU). This Directive has been amended considerably over the last couple of years.

### 9.1.2 Taxable persons

A VAT taxable person is anyone who, regularly or independently carries out an economic activity. This activity can be on a principal or accessory basis, with or without profit motive, and applies to the supply of goods or services referred to in the VAT Code, irrespective of the place where that activity is conducted.

Public authorities and public bodies are not considered to be taxable persons for the activities or operations they conduct as public authorities (see section 9.1.4 for a detailed list of applicable activities and operations). However, to a certain extent, they are liable for VAT on these activities or operations if, as a non-taxable person, it leads to distortions of competition.

Special categories also include:

- Exempt taxable persons: physical or legal persons who conduct activities which are exempt from the tax
- Defined non-taxable legal persons, for example public authorities.

### 9.1.3 Taxable transactions

Taxable activities usually fall within these four key categories:

- **Supply of goods** carried out for a consideration by a person liable for VAT, when they occur within Belgium. A supply of goods is the transfer or assignment of the power to dispose of the goods as the subsequent owner. Certain other transactions are also considered as supplies, for example private use of business assets.
- **Supply of services** carried out for a consideration by a person liable for VAT, when they occur within Belgium. A service is defined as any operation, other than the supply of goods.
- **Importations of goods**, which applies to goods that are introduced into a EU Member State from outside of the EU.
- **intra-Community acquisitions of goods**, which is the acquisition of the right to enjoy the power of ownership with respect to tangible movable property, which is dispatched or transported, by or on account of the seller or the purchaser, to the purchaser in a EU Member State other than the country from where the goods are dispatched or transported.

If one of the above transactions is deemed to take place in Belgium, Belgian VAT must be accounted for.

### 9.1.4 Exemptions

Exemptions can be divided into two groups:

- a. The right to deduct input VAT, which include, amongst others:
  - export of goods
  - intra-Community supply of goods
  - supplies with respect to aircrafts and sea-going vessels; and
  - supplies to embassies, consulates, and international institutions.
- b. Cultural and social considerations, which don't have the right to deduct input VAT. These are notably:
  - services provided by public attorneys, by the medical and certain paramedical professions, by hospitals and similar establishments
  - services relating to social work, social security or protection of children and young people, when provided by public bodies or other registered social establishments
  - services provided by certain sports establishments
  - services provided by recognised educational institutions, by specified social and cultural institutions, such as libraries, theatres, cinemas (providing certain conditions are met)
  - services provided by authors, artists and interpreters of works of art
  - the letting of immovable property, which is immovable by nature. It doesn't apply to certain taxable persons on the supply of buildings and the land on which they stand if the supply occurred beyond 31 December in the second year following the one in which the building was first placed into service or first entered into possession. Similar rules apply to the establishment and transfer of rights in rem, the lease of farming and rental of real property (except, for example, parking space and storage space for goods, hotels and camp sites)
  - insurance operations, except for services rendered by damage experts
  - most deposit and credit transactions, payment and collection transactions, and transactions relating to securities.

#### 9.1.4 VAT Rates

The standard rate of VAT is 21%.

Several reduced rates apply:

- 12% for coal-based fuel products, restaurant and catering services (excluding drinks), digital television subscriptions,
- 6% for general food produce, water, passenger transport, pharmaceutical products
- 0% for newspapers, waste etc.

#### 9.1.5 Deduction of VAT (or input tax)

A taxable person may deduct from the amount of the VAT owed any VAT levied on:

- Delivered goods or services provided,
- Goods imported by the taxable person or acquired within the European Union.

This deduction of VAT only applies if these goods and services are being used in:

- a) Economic activities subject to VAT or
- b) Economic activities exempt from VAT due to exportation, intra-Community deliveries, international transportation.

Sometimes, the deduction of VAT is limited. For example, the deduction of VAT for the purchase of mixed used (private and professional use) assets, such as company cars, mobile phones, etc. What's more, related supplies and services are proportionally limited to the professional use (with a maximum of 50% for company cars).

No VAT deduction is allowed for the supply and intra-Community acquisition of manufactured tobaccos, alcoholic beverages for end consumption, and certain expenses relating to accommodation, food and drinks, among other things.

For 'hybrid taxable persons', which means taxable persons who are liable for VAT and who are involved both in activities subject to VAT and activities not subject to VAT, the deduction of the VAT charged on inputs is also limited. Typically, the entitled deduction is applied to a , ratio of the operational turnover and the total turnover. In certain cases, it may apply to the actual use of the inputs.

#### 9.1.6 Filing and paying VAT

A taxable person must fulfil a number of mandatory VAT obligations. These concern accounting, the issuing of invoices, the filing of client lists, the submission of VAT returns, and the payment of VAT.

The VAT return and the payment must, at the latest, be submitted by the 20th day of the following month. If turnover does not exceed € 1,000,000 (excl. VAT) a year, the taxable person may, if they comply with certain rules, submit quarterly returns.

On the other hand however, if the IC supplies of goods exceed the threshold of € 50,000 per quarter, the Belgian taxpayer will be compelled to file its VAT returns and IC sales listings on a monthly basis.

## 9.1.7 Special schemes and simplification measures

Because the normal VAT system entails considerable obligations, special schemes apply to certain enterprises or transactions. Listed below are several examples:

- Special scheme for small enterprises

There is a tax exemption for the supply of goods and services by enterprises whose annual turnover does not exceed € 5,580 (excl. VAT) (presumably € 25,000 as of 1 January 2014, but not yet enacted as per publication date). However, the small enterprise is not entitled to deduct VAT on their purchases. This exemption system does not apply to specific immovable transactions, or to certain transactions involving a new means of transport.

- Consignment goods and call off stocks

Non-residents delivering a consignment or a supplier do not have to be registered in the recipients European Member State.

- Triangular transactions

A simplification arrangement applies to an intra-Community triangulation involving three parties, registered in three different European Member States, providing the reverse charge mechanism applies to the supply made by the intermediate supplier to the final customer.

- VAT groupings (VAT group registration)

Providing they are established in Belgium, legally independent taxable persons that are closely bound to each another financially, economically or through the organisation can opt to be treated as a single taxable person for VAT purposes.

VAT group treatment neutralizes the distinction between legal form and substance.

## 9.1.8 Foreign companies doing business in Belgium

### 9.1.8.1 VAT liabilities

Foreign companies that conduct commercial activities in Belgium that are not exempt from VAT, may be liable to submit VAT returns. Consequently, they are obliged to register for Belgian VAT and ensure that they abide by all relevant tax regulations.

A foreign company must be registered for Belgian VAT if the following conditions are met simultaneously:

1. The foreign company is performing taxable activities that take place in Belgium (supply of goods or services, intra-Community acquisition of goods, import of goods).
2. The activities performed in Belgium by the foreign company give it the right to deduct VAT. In other words, the foreign company is not only performing VAT-exempt activities.
3. The foreign company is liable for the payment of VAT to the VAT authority. No reverse charge mechanism for the supply of goods or services performed in Belgium can be applied.

VAT registration status differs depending on whether a foreign company operates from within a EU Member State or from outside of the EU.

Businesses established within the EU are entitled to register:

- Directly, without a fiscal representative
- Through the appointment of a local fiscal representative.

Businesses established outside of the EU must employ the services of a local tax representative, through which VAT registration can be obtained.

The VAT representative liaises with the foreign taxable person and the Belgian VAT authority. The VAT representative acts on behalf of the foreign company in respect of all rights granted and obligations imposed by the Belgian VAT regulations. The VAT representative is jointly and severally liable, together with the foreign company, for the payment of VAT, penalties and late payment interest relating to the activities performed in Belgium. This means that the fiscal representative is accountable for fulfilling all VAT-related obligations and formalities involving the Belgian authority on behalf of the foreign company.

There is no threshold for VAT registration in Belgium.

### **9.1.8.2 Reverse charge mechanism**

Belgium applies the reverse charge mechanism (when the liability to pay VAT is deferred and shifted to the VAT registered customer) to supplies made by a non-resident supplier. The sole condition is that the supplier is not established in Belgium when the supply is subject to VAT. Reverse charges can only be applied when the customer is a VAT taxable person established in Belgium or when there's an appointed VAT representative in Belgium.

## **9.2 Importation duties**

As a member of the EU, Belgium is part of the European customs union and applies the European customs tariffs and regulations. Accordingly, goods entering the EU in Belgium are in principle subject to customs duty tax.

## **9.3 Registration duties**

As a general rule, registration duties are levied when a deed or written document is registered. This could be any formal document copied, analysed or mentioned when registering fees and/or stamp duty in an official register or any other data medium.

Among others, the following must be registered:

- Deeds drawn up by Belgian notaries
- Private deeds or notarial deeds signed abroad that relate to the transfer or declaration of property or usufruct of property situated in Belgium, or relating to the lease, sub-lease or transfer of lease of such property
- Private contracts and notarial deeds drawn up abroad relating to the contribution of movable or immovable assets to Belgian legal entities or persons.

There are three types of registration duties - proportional duties, specific fixed duties and the general fixed duty.

### 9.3.1 Proportional registration duties

In each individual case, these duties amount to a percentage of the taxable base:

- Sale of real estate: the duty is set at 12.5 % (10 % in the Flemish Region) for sales, exchanges and all conveyancing agreements for valuable consideration, in respect of property or usufruct from real estate located in Belgium.
- Lease of real estate: the duty is set at 2.0 % for leases, sub-leases and transfers of leases of property (or parts of buildings) located in Belgium, and certain other assimilated operations. This duty is levied on the basis of the cumulative amount of rent and charges.
- Capital increase of Belgian companies: the registration duty on the increase in statutory capital of a Belgian company, without contribution of new assets, was reduced to nil as of 1 January 2006.

### 9.3.2 Specific fixed duties

These duties are those where the amount is a fixed sum. These can vary according to the nature of the deed.

### 9.3.3 General fixed duty

The general fixed duty is levied on all deeds not explicitly included in the Code of Registration Duties, Mortgage Duties and Court Fees, are which are therefore not subject to proportional duty or a specific fixed duty. The general fixed duty is € 25,00.

## 9.4 Donation duties (gift tax)

Donation duties or gift taxes apply to all donations of movable and immovable assets, regardless of their form, their object, their arrangements and the manner in which they are carried out. This duty is calculated on the market value of the donated goods, in principle without the deduction of expenses.

In Belgium, gift tax is imposed on the registration of a written document in which the gift is granted. The gift of immovable property always needs to be registered.

Given that they are not registered, the following gifts are not subject to gift tax:

- Transfer of movable property by hand (handgift/don manuel).
- Bank transfer (bankgift/don bancaire).
- Transfer by foreign notary deed.

However, gift tax must be paid if such a gift is registered voluntarily. The rate differs depending on the kind of the gift and on the region (Flanders, Brussels or Wallonia) where the donor is domiciled. The rate varies from 3% to 65% for immovable property.

Donations of *movable property in the Flemish region and Brussels-Capital region* between lineal relatives or between spouses is subject to a 3% duty on the gross part of each of the beneficiaries. A 7% duty is levied on donations between collaterals or non-relatives. However, donations of movable property made under the suspensive condition that the donor deceases before the beneficiaries are assimilated to legacies and are subject to inheritance tax.

In the Walloon region, in certain cases, specified *donations of movable property* are liable to the following proportional gift tax rates, applied to the gross part for each of the beneficiaries:

- 3.3% on donations between lineal relatives, between spouses or between legal cohabitants



- 5.5% on donations between brothers and sisters or between uncles/aunts and nephews/nieces
- 7.7% on donations between other persons.

## 9.5 Inheritance tax

Heirs and legal beneficiaries, whether they are residents or non-residents, are deemed taxable persons for the purpose of inheritance tax.

If the deceased resided in Belgium at the time of death, inheritance tax is levied on the net worldwide estate. If the deceased was a non-resident of Belgium, the inheritance tax is only levied on the Belgian immovable property.

Belgium inheritance tax is, in principle, based on the net value of the estate. The rate applied depends upon the relationship between the beneficiary/beneficiaries and the deceased. Different rules for determining the taxable basis and the tax rates apply, based upon the region in which the beneficiary is residing (Flanders, Wallonia or Brussels).

Rates are progressive and vary according to the degree of kinship and region:

	<u>Flemish region</u>	<u>Brussels region</u>	<u>Walloon region</u>
Spouse, children, grandchildren, parents, grandparents	3 % - 27%	3%- 30%	3%- 30%
Brothers and sisters	30% - 65%	20% - 65%	20% - 65%
Uncles, aunts, nephews, nieces	45% - 65%	35% - 70%	25% - 70%
Others	45% - 65%	40% - 80%	30% - 80%

A more beneficial tax regime regarding transfers on death of family owned business and companies may be applied in certain circumstances.

Any foreign inheritance tax on foreign immovable property may be deducted from Belgian inheritance tax on that same property, up to a maximum of the Belgian inheritance on that immovable property.

In relation to double taxation of inheritance, it should be noted that Belgium has only concluded double taxation agreements with France and Sweden.

# 10. PORTFOLIO INVESTMENT FOR FOREIGNERS

## 10.1 General investment information

Belgium does not have any rules that would limit the right of foreign investors to invest in Belgian securities, shares, real estate, etc. Neither is there any restrictions regarding the transfer of profits derived from Belgian investments.

Belgium has introduced policies to facilitate the free flow of financial resources. Credit is allocated at market rates and is available to foreign and domestic investors without discrimination. Belgium is fully served by the international banking community and is implementing all relevant EU financial directives.

Belgium also has a well-established stock market. At the end of 2000, the Brussels stock market merged with the Paris and Amsterdam bourses into Euronext, a Pan-European stock-trading platform. In 2006, Euronext and NY Stock Exchange shareholders voted to merge the two exchanges.

## 10.2 Stock exchange requirements

Belgium has traditionally pursued a very liberal policy in the field of exchange controls, and consequently there are no significant restrictions on capital or currency movements, either into or out of the country. There are no restrictions on residents owning and operating bank accounts in Belgium. Foreign individuals and companies established in Belgium are treated equally as residents for the purpose of exchange control regulations.

Each investment and transfer of funds must comply with the anti-money laundering legislation.

# 11. TRUSTS

## 11.1 Foreign trusts in Belgian law

As a typical civil-law country, Belgium does not have trust legislation.

Moreover, Belgium has not implemented the HCCH Convention on the Law Applicable to Trusts and on their Recognition (Hague Trusts Convention).

However, Belgium does recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons. The settlor can elect the governing law for the trust, providing the elected law contains trust provisions. If the settlor has not specified the governing law, the law of the country where the trustee was habitually residing when the trust was constituted applies.

A private foundation can be considered as an equivalent Belgian structure to a trust. This structure can be used as an estate planning tool. Private foundations are subject to legal entities income tax, as opposed to corporation tax.

## 11.2 Belgian taxation of trusts

The legal and tax consequences of a foreign trust are complex and uncertain.

To determine how a trust is treated under Belgian tax law, one must review the trust arrangement under Belgian civil law. Belgian tax law does follow civil law, unless tax law specifically deviates from it. The various transactions and legal relationships, as well as the rights and obligations of the settlor, trustee and beneficiary, must be translated into civil law terms before the Belgian tax rules can be applied. This is not always a clear-cut exercise, as Belgian civil law does not make a distinction between beneficial and legal ownership.

The Belgian tax authorities have not made a complete analysis of the tax situation of trusts. Case law and ruling decisions are scarce (see recent ruling N° 900.329 dated 22 December 2009 and ruling N° 700.112, dated 8 December 2009). They are usually based on a simplified perception of the trust as being one of two extreme forms: the irrevocable and discretionary trust or the fixed-interest trust.

What is important is the Ruling Commission accepts that a trust can be irrevocably discretionary, but that it will be thoroughly screened for any indications that the trust would be partially influenced and therefore not be considered as entirely discretionary for Belgian tax purposes.

A case-by-case analysis should be performed in order to determine the tax treatment in Belgium, as this will depend highly on the actual set-up of the trust structure.

## 11.3 New disclosure obligations on private estate and off-shore structures

From assessment year 2014, revenue year 2013 onwards, Belgian resident private taxpayers should indicate in their individual income tax return the existence of a legal construction of which the taxpayer himself, his spouse or his minor children are either a founder, or are, at his knowledge, in any way or at any time beneficiary or potential beneficiary.

This change in Belgian income tax law follows recent disclosure initiatives in our neighbouring countries such as The Netherlands, France and even in Luxembourg. It is in line with the recent proposition to expand the European Savings Directive by which a look-through approach would be applied in order to identify the ultimate beneficiary of trusts, Stiftungen and so forth.

# 12. PRACTICAL INFORMATION

## 12.1 Transportation

Belgium has a sophisticated air, rail and motorway transportation network. International airports exist in Brussels, Charleroi, Oostende and Antwerp. The vast number of motorways offers fast connections between all parts of the country and mainland Europe.

## 12.2 Language

Belgium has three official languages - Dutch, French and German. Foreign languages are widely spoken, especially English.

## 12.3 Business hours

Office working hours are usually between 8:30 am and 5:00 pm, with one hour for lunch.

Factories start earlier, and banking hours are generally 9:00 am to 4:00 pm.

## 12.4 Time relative to Greenwich Mean Time (GMT)

Belgium is in the Central European Time (CET) Zone. CET is one hour ahead of Greenwich Mean Time (GMT+1). Like most states in Europe, Summer (Daylight-Saving) Time is observed in Belgium between the end of March and the end of October, with the time shifted forward by one hour; two hours ahead of Greenwich Mean Time (GMT+2).

After the Summer months (between the end of October and the end of March) the time in Belgium is shifted back by one hour to CET.

## 12.5 Public holidays (2014)

The national holidays observed by most businesses and government offices in 2014 are:

- |                |                                |
|----------------|--------------------------------|
| ▪ 1 January    | New Year's Day                 |
| ▪ 21 April     | Easter Monday                  |
| ▪ 1 May        | Labour Day                     |
| ▪ 29 May       | Ascension Day                  |
| ▪ 30 May       | (banks are closed)             |
| ▪ 9 June       | White Monday                   |
| ▪ 11 July      | Flemish Community Holiday only |
| ▪ 21 July      | Independence Day               |
| ▪ 15 August    | Assumption                     |
| ▪ 27 September | French Community Holiday only  |
| ▪ 1 November   | All Saints' Day                |
| ▪ 11 November  | Armistice Day                  |
| ▪ 15 November  | German Community Holiday only  |
| ▪ 25 December  | Christmas Day                  |
| ▪ 26 December  | Boxing Day                     |

## 12.6 Why MAZARS BELGIUM?



Our established office in Belgium has dedicated teams of tax, legal, accounting and outsourcing specialists ready to work on your assignment. Our offices have significant experience in acting for international companies and groups in a variety of sectors. We believe the five points below highlight the main reasons for choosing Mazars as a service provider:

- **Experience:** Mazars is one of the leading professional service providers with a strong focus on international companies.
- **A clear and cohesive organisation of the assignment:** You will be supported by a comprehensive bespoke service package and, if required, offered a single contact person managing all the accounting aspects of your global organisation, as well as local points of contact for your people on the ground to liaise with.
- **Tailored approach:** Our solutions are modular and scalable to your specific needs and will reflect the different stages of your growth.
- **Integrated partnership:** Operating as part of an integrated partnership, Mazars' clients benefit from the co-operative approach that our partners offer when seeking out the best advice.
- **Personal approach:** We believe that the personal approach we offer our clients is the unique selling point for our organisation. The availability of individuals to answer you queries, both centrally and locally, provides a supportive environment through which we can build our relationship to add value to your organisation.

**MAZARS, office Ghent**  
Tel.: +32 (0)9 265 83 20  
Fax: +32 (0)9 265 83 23  
Bellevue 5, bus 1001  
B-9050 GENT

**MAZARS, office Antwerp**  
Tel.: +32 (0)3 230 31 55  
Fax: +32 (0)3 230 06 98  
Berchemstadionstraat 78  
B-2600 ANTWERPEN

**MAZARS, office Brussels**  
Tel.: +32 (0)2 779 02 02  
Fax: +32 (0)2 779 03 33  
Marcel Thiry laan 77 bus 4  
B-1200 BRUSSELS

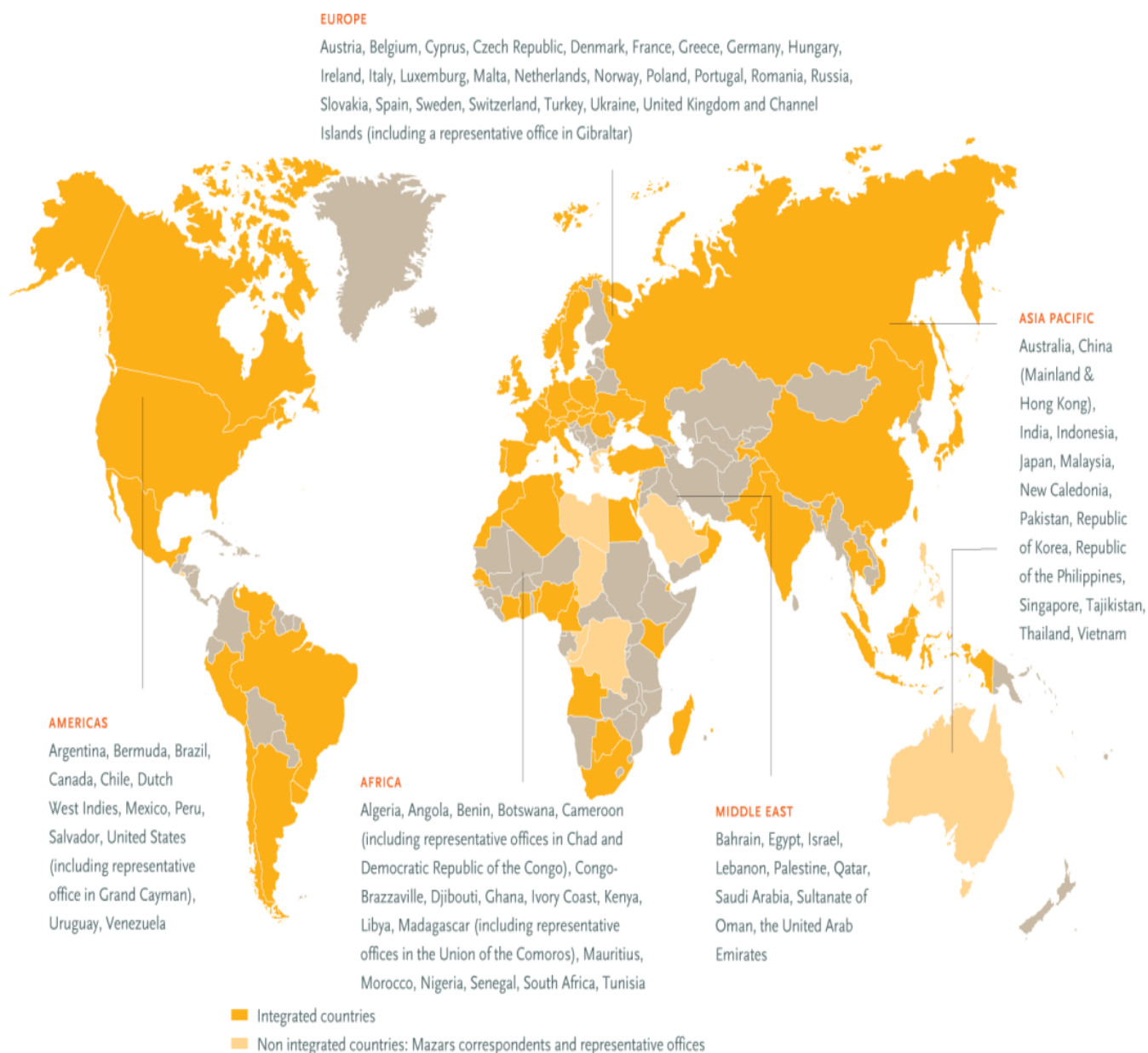
More general information on Mazars and our services can be found on our website: [www.mazars.be](http://www.mazars.be) .

## 12.7 MAZARS International

Mazars is an international, integrated and independent organisation, specialising in audit, advisory, accounting and tax services.

The Group has a presence in 68 countries and draws upon the expertise of 13,500 professionals to assist businesses, major international groups, SMEs, entrepreneurs and public bodies at every stage in their development. Mazars also has correspondents and local representative offices in 17 further countries, which gives it additional capability to serve clients to the same strict quality standards across five continents.

By listening closely to clients and understanding their needs, the Mazars range of services is designed to provide the assurance of recognised technical and regulatory expertise, together with the added-value of a business partner that can advise effectively on improving performance at all levels.



## 13. IMPORTANT DISCLAIMER

This business and taxation guide has been prepared for the benefit of clients and Praxity participant firms only. The guide describes, in broad terms, the various forms of business organisations recognised in Belgium, as well as the prevailing tax practices. It provides a general outline of the legal, taxation and employment requirements and incentives that may interest potential investors contemplating setting up business in Belgium.

However, it does not deal exhaustively with any of the topics covered.

The application of the information included in this publication will depend on specific circumstances. Companies and individuals planning to use Belgium in their future business operations, or indeed companies that are already established in Belgium, are strongly advised to seek professional advice before making any firm decisions about foreign operations.

This material does not represent, nor does it replace legal and tax advisory services. No liability is accepted for acts or omissions taken through the reliance upon the contents of this publication.