Morison KSi

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May 2018

Doing Business Guide
Belgium

Morison KSi

About This Guide

This guide has been produced by the Morison KSi Belgian member firms for the benefit of their clients and associate offices worldwide who are interested in doing business in Belgium.

Its main purpose is to provide a broad overview of the various issues that should be considered by organisations when setting up business in Belgium.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in Belgium or looking to Belgium as an opportunity for expansion, should seek professional advice before making any business or investment decision.

While every effort has been made to ensure the accuracy of the information contained in this guide, no responsibility is accepted for its accuracy or completeness.

The information in this guide is up to date as at the edition date.

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Introduction

Why Belgium?

Located in the heart of Europe, Belgium enjoys a key position in the European and international economy. As the capital of the European Commission and home to many international organisations such as NATO, as well as being the headquarters of multinationals and major global players, Belgium has always been a prosperous marketplace for trade with countries all over the world. Its central location in one of the most wealthy and developed regions in the world offers numerous opportunities for investors of all kinds. It is a gateway to 500 million European consumers with a high purchasing power.

Belgium consists of three regions (Brussels-Capital, Flanders and Wallonia) and has three language groups (French, Dutch and German), although English is also widely spoken.

The economy

According to the latest WTO data, Belgium ranks as the 10th largest exporting country in the world; it exports >80% of its national GDP.

Brussels is well known as the capital of the European Union (EU). Located <300 km from Paris, 200 km from Luxembourg and Amsterdam, 350 km from London and 750 km from Berlin, Belgium offers a logistics springboard, while its dense, interconnected transport network ensures efficient distribution.

Belgium has one of the highest productivity levels in the EU. Key factors in this are the multilingual workforce and the quality of the education system: nearly half of its 16 universities are among the world's best ranked.

Although the corporate tax rate is relatively high (33.99%), this is relieved by numerous tax deductions such as notional interest deduction (NID) and the patent income tax regime. There is also a favourable tax regime for expat employees. Because of these measures, the effective corporate tax rate can be significantly lower than the nominal rate and lower than in many other countries. In addition, the Advanced Tax Ruling system provides legal assurance for investors.

Belgium is the fastest place in Europe to establish a business: it only takes a couple of days and 3 start-up procedures. The Federal Region Liaison Unit for Foreign Investment ensures smooth and interactive cooperation between all the partners involved. Each of the three regions has its own agency to assist investors with all practical matters related to setting up their business.

Despite the country's key position in the EU, the Belgian real estate market is still much cheaper than that of neighbouring European major cities. Belgium enjoys one of the best living standards in Europe.

Business Structures

Overview

Belgian law provides a variety of business structures. The appropriate form depends on the nature of the business; the objectives of the respective investors/ shareholders; legal, accounting and tax considerations; and the size of investment. Whatever the type of business structure, all shares are registered. Business activities may be carried out on a personal basis (self-employed) or under a business structure.

Belgian companies are taxed at the standard rate of 33.99%, which can be reduced up to 24.98% under certain circumstances. For the self-employed, there is a standard, progressive personal tax rate of 25-50%.

Formalities for setting up a company

A company can be incorporated by consideration in cash, in kind, or, under certain circumstances, 'in industry'. There is no residency requirement for shareholders or directors, who can be individuals or entities. Registration with a public Belgian notary is usually required and a financial plan must be submitted prior to incorporation.

To conduct business activities in Belgium, all companies must be registered with the Central Register of Companies *(Banque-Carrefour des Entreprises / Kruispuntbank van Ondernemingen)*. A company number is issued, which can also be activated as a VAT number. This must be used in all communications with other entities or individuals, including Belgian authorities.

A Belgian company planning to issue financial instruments to the general public (i.e. ≥50 people) must register with the Financial Services and Markets Authority (FSMA). Special procedures apply for banks, insurers and leasing companies.

Principal forms of business structure

Belgian company law differentiates between several forms of company; the most popular of these are summarised in Table 1.

Branch of a foreign corporation

A foreign corporation may set up a branch in Belgium. Branches are governed by the same rules as Belgian companies for their management and operations in Belgium, although the authorities may be reluctant to grant investment incentives to branches.

Branches in Belgium are subject to corporate income tax and, like Belgian companies, taxed at the standard rate of 33.99%.

The articles of association of the foreign head company must be published in the Belgian Official Gazette.

A foreign company setting up a branch in Belgium must register this branch with the Central Register of Companies *(Banque-Carrefour des Entreprises / Kruispuntbank van Ondernemingen)* by submitting the following:

- A certified translation of statutes of the foreign company
- A statement of the board of directors to set up a Belgian branch
- Evidence of an appointed legal representative
- Statement of the powers delegated to this legal representative
- The address and activities of the Belgian branch

Table 1: Principal forms of business structure

Form	Shareholders	Incorporation and share capital	Shares and warrants	Directors and managers	Requirements
Private limited liability company *(BVBA/ SPRL)*	≥1 shareholder Shareholders' liability is limited to their contribution to the share capital.	Minimum share capital is €18,550. Minimum paid-up share capital is €6,200 (if 2 shareholders) or €12,400 (if 1 shareholder). Compulsory incorporation before a notary	Shares are nominal. The approval of ≥50% of other shareholders is needed for a transfer. The company can issue debentures.	≥1 manager (statutory or not) The term of their appointment can be indefinite or limited. Managers are individually liable for management.	The company must hold ≥1 shareholders' meeting each year, at which the directors' management report and the annual accounts are approved. The accounts are filed and published within the National Bank of Belgium; they are publicly available.
Public limited liability company *(NV/SA)*	≥2 shareholders Shareholders' liability is limited to their contribution to the share capital.	Minimum share capital is €61,550. Minimum paid-up capital is €61,500. Compulsory incorporation before a notary	Shares are nominal or dematerialised. These are, in principle, freely transferable. The company can issue profit-sharing certificates, debentures, convertible bonds and warrants (subscription rights).	≥3 directors; or 2 if there are only 2 shareholders Directors form the board of directors. The term of their appointment is limited to 6 years, renewable. Directors are individually liable for management.	The company must hold ≥1 shareholders' meeting each year, at which the directors' management report and the annual accounts are approved. The accounts are filed and published within the National Bank of Belgium; they are publicly available.
Cooperative limited liability company *(CVBA/ SCRL)*	≥3 shareholders Shareholders' liability is limited to their contribution to the share capital.	Minimum fixed-share capital is €18,550. Minimum paid-up capital is €6,200. Compulsory incorporation before a notary The company can issue variable capital. Variable capital can be increased and decreased without notary's deed.	Shares are nominal. The approval of ≥50% of other shareholders is needed for a transfer. The company can issue debentures.	≥1 manager (statutory or not) The term of their appointment can be indefinite or limited. Managers are individually liable for management.	The company must hold ≥1 shareholders' meeting each year, at which the directors' management report and the annual accounts are approved. The accounts are filed and published within the National Bank of Belgium; they are publicly available.
Partnership limited by shares *(Comm.VA/ SCA)*	≥2 shareholders There are 2 kinds of shareholder: partners and shareholders. Partners' liability is joint. Shareholders' liability is limited to their contribution to the share capital.	Minimum share capital is €61,500. Minimum paid-up capital is €61,500. Compulsory incorporation before a notary	Shares are nominal or dematerialised. They are, in principle, freely transferable. The company can issue profit-sharing certificates, debenture, convertible bonds and warrants (subscription rights).	≥1 director (statutory), who must also be a partner The term of their appointment is indefinite. Directors are individually liable for management.	The company must hold ≥1 shareholders' meeting each year, at which the directors' management report and the annual accounts are approved. The accounts are filed and published within the National Bank of Belgium; they are publicly available.
Limited partnership *(Comm. V/ SCS)*	≥2 shareholders There are 2 kinds of shareholder: partners and shareholders. Partners' liability is joint and unlimited. Shareholders' liability is limited to their contribution to the share capital.	No minimum share capital, which can be as low as €1. The incorporation may intervene under private deed. The deed must only be published in the Belgian Official Gazette (*Moniteur Belge*); this costs about €150.	Shares are nominal. The approval of ≥50% of other shareholders is needed for a transfer.	≥1 manager (statutory), who must also be a partner Managers are individually liable for management. The term of their appointment can be indefinite or limited.	The company must hold ≥1 shareholders' meeting each year, at which the directors' management report and the annual accounts are approved. The accounts are not published.
General partnership *(VOF/SNC)*	≥2 partners Partners' liability is joint and unlimited.	There is no minimum of share capital, which can be as low as €1. The incorporation may intervene under private deed. The deed must only be published in the Belgian Official Gazette (*Moniteur Belge*); this costs about €150. Shares are registered and nominal.	Shares are nominal The approval of ≥50% of other shareholders is needed for a transfer.	≥1 manager (statutory or not) Managers are individually liable for management. The term of their appointment can be indefinite or limited.	The company must hold ≥1 shareholders' meeting each year, at which the directors' management report and the annual accounts are approved. The accounts are not published.

A foundation is usually created by one or several persons or entities that assign funds to the realisation of an objective or a disinterested goal of their choice.

- The most recent annual and consolidated financial statements of the foreign head office
- Companies from outside the EU must indicate which jurisdiction they fall under and their registered capital.

For VAT and social security purposes, a branch must also obtain a company number.

Annual obligations include submission to the National Bank of Belgium of information on profits, directors and auditors, together with the company's annual and consolidated financial statements.

Association

As a general rule, an association is created by individuals for the purpose of promoting private interests, promoting a trade or profession, achievement of a social purpose, or any other lawful activity on a non-profitmaking basis. The association cannot be devoted to developing commercial or industrial operations, or seek to earn financial profit for its members. An association is thus the typical entity used for non-profit organisations.

Generally, all associates are jointly and severally liable for all debts of the association.

For association agreements, there is no requirement to certify the articles of incorporation with a public Belgian notary. However, the articles of association must be filed at the clerk's office of the commercial court in the district where one of the centres of operation is established.

Foundation

A foundation is usually created by one or several persons or entities that assign funds to the realisation of an objective or a disinterested goal of their choice.

Foundations must be incorporated before a notary.

A foundation in Belgium can be established for a private interest or for a public purpose, and tends to the conservation of a patrimony and/or to the realisation of working, philanthropic, philosophical, religious, scientific, artistic, teaching or cultural goals.

Labour and Personnel

Government incentive for new employment

The Belgian government decided to provide an incentive for all new employers by exempting their first employee (hired within the period between 1 January 2017 and 31 December 2020) from National Social Security Office (NSSO) contributions. The next five employees can be hired with a significant 'discount', as shown in Table 2.

Employment contracts

For full-time work for an indefinite period, there are no legal requirements for a written employment contract – a verbal agreement is sufficient to invoke the mandatory provisions of Belgian law. All other employment (e.g. part-time work or for a definite period) requires a written contract. In the absence of a written contract, the employee is deemed to have been hired for an indefinite period.

Before starting any employment in Belgium, the employer needs to address the following items.

Immediate declaration of employment (DIMONA)

Under the Belgian social security regime, this declaration of employment must be made to the NSSO before the employee starts work. An end-of-employment declaration must be made no later than the day after employment finishes.

Accident insurance

The employer must take out statutory insurance for all employees subject to Belgian social security. This covers accidents which occur either at work or during the journey to and from home, and all activities set for the employee by the employer. This obligation applies from the first day of employment of the first employee. Retroactive coverage is not permitted.

Suspension of employment contract

Official public holidays

Belgium has 10 public holidays per year (listed below). Public holidays occurring on a Sunday or on a day of normal inactivity within the company, must be replaced by a normal day of activity within the company.

- New Year's Day (1 January)
- Easter Monday
- Labour Day (1 May)
- Ascension Day
- Whit Monday
- National Holiday (21 July)
- Assumption Day (15 August)
- All Saints' Day (15 August)
- Armistice Day (11 November)
- Christmas Day (25 December)

Table 2: NSSO contribution discounts for new employers

<table>
<tr><th rowspan="2"></th><th colspan="3">Forfeits per quarter (€)</th></tr>
<tr><th>First 5 quarters</th><th>Next 4 quarters</th><th>Next 4 quarters</th></tr>
<tr><td>1st employee</td><td>Exempt</td><td>Exempt</td><td>Exempt</td></tr>
<tr><td>2nd employee</td><td>1,550</td><td rowspan="5">1,050</td><td rowspan="5">450</td></tr>
<tr><td>3rd employee</td><td rowspan="4">1,050</td></tr>
<tr><td>4th employee</td></tr>
<tr><td>5th employee</td></tr>
<tr><td>6th employee</td></tr>
</table>

Annual vacation

The statutory annual paid holiday period is based on the number of days worked in the previous year. For a 5-day working week, the annual leave entitlement is 20 days. The holiday allowances of blue-collar employees are paid by a holiday fund; the holiday pay (92% of July's salary) of white-collar employees is paid by the employer.

Periods of incapacity for work

Any white-collar employee who is unable to work is entitled to be remunerated by the employer for the first 30 days of incapacity. Blue-collar employees are guaranteed a remuneration for the first 7 days, followed by the next 7 days at 85.88% of the normal remuneration. They are also entitled to a percentage of their remuneration from the 15th to the 30th day of incapacity.

Incapacity for work exceeding this period is covered by the employee's health insurance fund.

Termination of employment contract

Termination with a notice period

As of 1 January 2014, the notice period is determined in two time frames: the period before 1 January 2014 and the period as from 1 January 2014.

The first part of the notice period will be determined according to the legal, statutory and conventional rules which apply to the employee concerned on 31 December 2013. This means that the first part of the notice period needs to be set as if the employment contract ended on 31 December 2013.

The second part of the notice period is calculated based on the seniority acquired by the employee as of 1 January 2014. For this second part, the following notice periods will apply (Table 3).

Employers and employees can, however, agree to more favourable terms regarding the notice period at an individual level or even for the company as a whole.

Breach of contract

Both employer and employee can terminate the employment contract with immediate effect ('breach of contract'). In this case, severance pay is due by the party breaking the contract, equivalent to the salary amount that would have been paid if the relevant notice period had been served.

Severe fault

A severe fault is defined as 'reasons or incidents that make any professional relation between employer and employee impossible in an immediate and permanent manner'. If an employment agreement is terminated due to a severe fault, no severance pay is due.

Very strict legislation applies: termination should take place within 3 days from discovery of the urgent reason, and within the following 3 days these urgent reasons must be notified to the party at fault. If this concerns a 'protected' employee (see below), a special procedure before the labour court is required.

Table 3: Statutory notice periods, based on seniority of employee as of 1 January 2014

Seniority	Notice period (weeks)		Seniority	Notice period (weeks)	
	Notice by employer	Notice by employee		Notice by employer	Notice by employee
0–3 months	2	1	8–9 years	27	13
3–6 months	4	2	9–10 years	30	13
6–9 months	6	3	10–11 years	33	13
9–12 months	7	3	11–12 years	36	13
12–15 months	8	4	12–13 years	39	13
15–18 months	9	4	13–14 years	42	13
18–21 months	10	5	14–15 years	45	13
21–24 months	11	5	15–16 years	48	13
2–3 years	12	6	16–17 years	51	13
3–4 years	13	6	17–18 years	54	13
4–5 years	15	7	18–19 years	57	13
5–6 years	18	9	19–20 years	60	13
6–7 years	21	10	20–21 years	62	13
7–8 years	24	12	As of 21 years	+1 week per started year of seniority	13

Motivation for termination

The employee can demand a written explanation of why their contract has been terminated. An employer who fails to provide this is fined the equivalent of the employee's 2 weeks' salary. If the employee can prove that the motives for the termination are clearly unreasonable, they can claim compensation of 3-17 weeks' salary.

Protection from termination of employment contract

Many categories of employee (e.g. pregnant, or union representative) have extra protection against termination of their employment contract. Though their contract can still be terminated at any time, the employer must prove that this is unrelated to the same reasons these employees are protected for. In some cases, the employer must follow a specific procedure before the labour court.

Fixed-term contract and contracts for a specific task

These end automatically once the contract's end date is reached or the task completed.

Remuneration and benefits

Belgium has compulsory regulations governing remuneration. The relevant Joint Committee determines minimum wage, year-end bonus and all other possible premiums, compensations and benefits. Further legal benefits can be provided to the employee at the employer's discretion (e.g. a company car, bonus scheme, lunch vouchers, group insurance, hospitalisation insurance or profit shares).

Social security

The Belgian social security system is based on the payment of contributions from income.

For white-collar employees, the employer's contribution amounts to ±28% of the monthly gross salary. For blue-collar employees, the employer's contribution amounts to ±38% of 108% of the monthly gross salary.

The employee's contribution amounts to 13.07% for both white-collar and blue-collar employees (the contribution of the latter being, however, based on 108% of their monthly gross salary).

Social insurance secures income in case of unemployment, and provides a pension and cover for sickness or work-related accidents and illness. It also offers other benefits relating to health care and family allowances.

Attention must be given to the EU social security regulations and to bilateral social security treaties to ascertain whether foreign employees are subject to Belgian social security law. If the EU social security regulations are not applicable and there is no social security treaty between the country of origin and Belgium, then Belgian social security law will apply to a foreign employee working in Belgium and affiliated to a Belgian company.

Work councils and CPPW

Works councils are created in companies that have an average of ≥100 employees on their payroll. The council meets every month and must be provided with information on the company's performance and productivity. Companies with an average of 50 employees must have a committee for prevention and protection at work (CPPW), an elected body that consults with the employer on health and safety issues.

Both employees and employers are represented but not necessarily in equal numbers. Social elections take place every 4 years.

Working hours per week

On average, employment legislation lays down a maximum of 38 working hours per week. Shorter weeks are possible. Flexible working hours can be negotiated between employer and employees, and form part of a collective agreement. In this case, the maximum working hours cannot exceed 9 hours per day and 45 hours per week. Hourly pay is increased by 50% (100% on Sundays and public holidays) for hours worked above 9 hours per day.

In most cases in which the normal limits on work time may be exceeded, compensatory rest must be granted to ensure that the average weekly work time of 38 hours is complied with in a reference period.

Self-employed

Self-employed persons pay their social security contributions in quarterly instalments to the social insurance fund to which they are affiliated. These contributions are a lump sum, minimum amount or a percentage (20.5% for 2018) calculated on the basis of the annual net taxable professional income. Self-employed persons are not entitled to unemployment pay.

International Mobility

A company whose registered office is not established in Belgium can temporarily post workers to Belgium. In this case, it must respect the employment conditions applicable in Belgium. More information about the relevant procedures is available on the Belgian Federal Public Service Employment, Labour and Social Dialogue website (www.employment.belgium.be).

Preliminary LIMOSA declaration

The term LIMOSA refers to the cross-country information system for migration research and social administration. As of 1 April 2007 there has been a requirement to fill in a mandatory declaration, known as the LIMOSA declaration, for posted (seconded) employees and self-employed persons who are temporarily or partially working in Belgium but who normally work in one or more countries other than Belgium, or who are recruited in a country other than Belgium. The declaration must be filed by the foreign employer or the foreign self-employed person via the government LIMOSA website (www.limosa.be) before commencing work in Belgium. There are certain exemptions from this obligation, mainly depending on the duration and nature of the activities to be undertaken in Belgium.

Liaison person in Belgium

Together with the LIMOSA declaration, the employer must indicate a liaison person. This must be a natural person who is authorised by the sending employer to provide the Belgian social inspectors with the required information about the activities and employment conditions of the posted employee in Belgium.

Upon request, the liaison person must submit required documents (e.g. payslips, the employment contract, the employee record, etc.), preferably in English, for inspection.

Permits and visas

One must meet a number of conditions to come and work in Belgium. These conditions depend on the following three key factors:

- nationality and country of residence
- the length of planned stay in Belgium
- professional status (employee or self-employed) in Belgium

Work permit for an employee

There are three types of work permit in Belgium and it depends on the individual situation of the employee as to which Belgian work permit is required.

Work permit A

A work permit A is valid for all paid occupations in Belgium and is valid indefinitely – it allows the holder to work for any employer in Belgium for any period of time. To obtain a type A Belgian work permit, one must prove they have worked for four years on a type B Belgian work permit within a 10-year, uninterrupted, legal stay in Belgium. 'Uninterrupted' is defined as not being outside Belgium for longer than one year within the 10-year period mentioned above.

Work permit B

This work permit is issued for a specific job and for a specific employer for a maximum period of up to 12 months. It can, however, be renewed as long as the employee meets the requirements.

The European Blue Card is a combined work and residence permit which allows highly-skilled workers from outside the EU to live and work in Belgium for >3 months.

The Belgian work permit B requires the employer's sponsorship and it is the employer who must apply for the employee's work permit. The document is valid for employment with the sponsoring company only and for the position indicated in the application. In principle a foreign employee is only allowed to work in Belgium when a labour market test indicates that no suitable candidate can be found in Belgium or the European Entrepreneurial Region (EER) within a reasonable time frame.

Some professionals can, however, obtain a work permit without the need of a labour market test; this includes researchers, highly-qualified workers and technical experts. Employers must offer above-average wages for highly-qualified (at least in possession of a Bachelor's degree) employees and executives. Salary levels are reviewed yearly – in 2018 the annual minimum salary levels are €40,972 for highly-qualified workers and €68,356 for executives and managers.

More details on work permit B can be found online here.

Work permit C

Work permit C is intended for foreign nationals who are staying in Belgium only temporarily (e.g. students or family members of consular officials) or for individuals whose right to stay is not confirmed (e.g. asylum seekers). It allows the holder to undertake paid employment in any field and for any type of job contract within the validity period of their residence permit, providing similar rights of employment as those of Belgian citizens. The permit is issued for up to 1 year and can be renewed under certain circumstances.

European Blue Card

The European Blue Card is a combined work and residence permit which allows highly-skilled workers from outside the EU to live and work in Belgium for >3 months.

To be employed under the Blue Card Scheme, one must:

- possess a permanent or, at a minimum, a year-long employment contract with a Belgian company
- be paid a gross annual salary of at least €52,978 (as of 2018)
- hold a recognised higher education qualification

The employer must obtain a temporary employment permit for the employee and, at the same time, the employee can apply for the long-term visa for the Blue Card, either at the Belgian embassy in their home country (as listed online here) or, if one is already in Belgium, via the foreign nationals department of the municipality in which the employee is living.

Work permit for a self-employed person

Non-EU, EER or Swiss nationals wishing to pursue a self-employed activity in Belgium must be in possession of a 'professional card' – the authorisation of the Federal Public Service Economy, SMEs, Self-Employed and Energy (FPS Economy) to pursue self-employed activities in Belgium. As a general rule 'self-employed activity' denotes activity which is not subject to the regulation on the employment of foreign workers. One can apply for this card when organising a Belgian visa, by contacting the Belgian embassy or consulate in their home country (as listed online here) prior to arrival.

After receiving the decision from the FPS Economy, the applicant must return to the consulate to lodge an application for a provisional residence permit (D visa).

Once in Belgium, he goes to collect his professional card from the Belgian enterprise counter given on the application form for a professional card.

Visa for Belgium

The Belgian work permit is closely linked to the residence status in Belgium. Application for a visa must be done in person at the local Belgian embassy or consulate. The applicant will be requested to communicate their travel destination and provide information on the circumstances of the trip.

Short-stay C visa

One must apply for this visa at the Belgian embassy in their home country (as listed online here) no earlier than 3 months before the proposed journey. The C visa is meant for a stay of ≤90 days, within a 6-month period. One will need to complete an application form (available online here) in either French, Dutch, German or English, and be able to provide a valid passport or national ID issued in the last 10 years and with at least 3 months left to run, a recent photo and other supporting documents (e.g. a travel document, confirmation of accommodation in Belgium, proof of financial support, proof that one will return to the home country).

Long-stay D visa

If one wants to come to Belgium for longer than 3 months (90 days), an application for a long-stay D visa and residence permit based on the purpose of stay is required.

The supporting documents to be provided include an application form, a passport and a medical certificate issued by the embassy's medical professional and with the official embassy stamp.

Official foreign documents must be legalised or carry an apostille, unless an exemption is provided in a treaty. Documents drawn up abroad in a language other than German, French or Dutch must be translated by a sworn translator. The translation must be legalised as a separate document in line with the procedure laid down in the country of origin, and then by the competent Belgian embassy or consulate.

The Belgian government is in the process of transposing an EU directive, aimed at providing a single permit for non-EU employees to work in multiple branches of an EU-based multinational company. The implementation of the said directive has been delayed, however, it is predicted to bring significant change to Belgium's work permit procedures once in force.

Upon arrival in Belgium

Having arrived in Belgium one has 3 days to register the arrival at the municipal administration office. A document specifying the end date of one's stay will be issued.

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Taxation System

This section provides an outline of the key Belgian tax considerations which apply to companies and individuals. It also contains specific implications for cross-border transactions.

Corporation tax

A company is tax resident in Belgium if its principal establishment, registered office or place of management is located in Belgium. Only entities with a separate legal personality (body) are subject to corporate income tax.

Corporate taxpayers are taxable on their worldwide income less allowable tax deductions. Income from foreign real estate or foreign branches in countries with which Belgium concluded a double tax treaty will, in principle, be tax-exempt.

The basic corporate tax rate in Belgium is 29.58%, applicable to both resident and non-resident companies (Belgian legal branches and permanent establishments of foreign companies). As from 2020 the corporate tax rate will be further reduced to 25%. A lower corporate tax rate of 20.4% applies to small and medium-sized companies (SMEs) on the first €100,000 of taxable income as from 2018, if specific conditions are met.

Companies and branches that are subject to Belgian corporation tax must file an annual corporate tax return within the legal time frame. For companies closing accounts on 31 December, the tax return filing due date is usually 30 September of the following year.

Companies and branches may choose to pay their tax in quarterly pre-payments throughout the accounting year, to avoid a penalty surcharge (6.75% as from 2018).

Key aspects of the Belgian corporate tax system are:

- 100% tax exemption for dividend earnings received by a Belgian corporate taxpayer as from 2018, if certain conditions are met
- Capital gain exemption on disposal of shares, if certain conditions are met
- Tax losses may be carried forward to subsequent year with no time limit
- Companies and branches can claim a 'notional interest deduction' (NID) – a deemed interest expense on qualifying equity
- Specific thin capitalisation rules apply with respect to tax deductibility of interest expenses on intra-group loans and loans provided by shareholders or directors
- A tax credit is available for withholding tax on foreign-source interest or royalties
- Various tax deductions and exemptions are available such as research and development (R&D) investment deductions and tax credits, patent income deduction or innovative income deduction
- A fiscal consolidation regime ('group contribution regime') will be introduced as from 2019

Details of various tax incentives for businesses established in Belgium are set out on page 18 of this guide.

Value-added tax

Value-added tax (VAT) is due from taxpayers in the exercise of their business activities on the delivery of goods and services in Belgium. It is also due on goods imported from EU and non-EU countries, and on some services purchased abroad.

The VAT is collected through a system whereby the taxable person or entity, who supplies goods or services, pays tax periodically at fixed rates on the price of those goods and services. This periodic payment is computed by applying the appropriate rate of VAT to the consideration charged for each item and service supplied during the declaration period, then reducing this amount by the VAT that had been charged to the taxpayer during the same period for goods and services they received, and goods imported for their use.

Taxable persons

A taxable person is any person (an individual or a legal entity) whose economic activity consists of supplying goods or services as referred to in the law, wherever this economic activity is carried out, in a regular and independent manner, with or without profit motive, on a principal or an accessory basis.

Taxable transactions

VAT applies to:

- Supply of goods
- Supply of services
- Import of goods
- Intra-Community acquisition of goods

Many exemptions apply. A special exemption applies in the case of a transfer of a whole business of a branch of a business to a taxable person who is, partially or totally, entitled to deduct input VAT.

Exports and intra-Community (IC) supplies (i.e. supplies to persons affecting a taxable intra-Community acquisition) are also exempt. However, they do not result in the loss of deduction for input VAT.

Belgian law also provides the following VAT exemptions whereby input VAT cannot be deducted:

- The supply of immovable property not qualifying as a new building (when subject to registration duties)
- The rent of immovable property
- Services for social purposes (e.g. hospitals, doctors, dentists, etc.)
- Scientific and cultural activities
- Banking and financial transactions (e.g. deposit and acceptance of funds, credit operations, etc.)
- Insurance transactions

Place of taxable transaction

Goods sold within Belgium are subject to Belgian VAT.

Goods imported into Belgium or transported from within the EU are also subject to Belgian VAT, while goods exported outside the EU or transported into the EU are normally not subject to VAT in Belgium.

In general, services are subject to Belgian VAT when the supplier is established in Belgium. Business-to-business (B2B) supplies of services are taxed in the country where the buyer is located. However, there are some exceptions to this rule (e.g. services relating to real estate).

Persons liable to pay VAT

In principle a taxable person carrying out a taxable supply of goods or of services is liable to pay the VAT due on the transaction. However, for some transactions taking place in Belgium, the customer is responsible for accounting the VAT on the transaction ('reverse charge'). Among others, this applies to building-related services and to most transactions performed by a taxable person who is not established in Belgium. VAT advice should be sought in each individual case. If the taxable person who is not established in Belgium is liable to pay the Belgian VAT due on the transaction, then they must register for VAT in Belgium.

VAT registration

When a person (individual or legal entity) is subject to Belgian VAT, they must obtain a Belgian VAT registration number. Taxable persons established in other EU member states are no longer obliged to appoint a VAT representative, although this is still possible and could be beneficial in certain circumstances. For non-EU taxpayers this is still required.

Taxable persons with a fixed establishment in the EU who need to be registered in Belgium for VAT purposes can opt either to register directly or via the appointment of a VAT representative under an individual VAT number. Both systems have advantages and disadvantages.

If turnover from taxable supplies does not exceed €25,000 in the preceding calendar year, there is an obligation to register but other VAT formalities are reduced to a minimum.

VAT group system

Under a grouping regime, separate VAT-taxable persons may be treated as a single VAT-taxable person as long as they are all established in Belgium and closely bound together. Companies in a VAT group may invoice other Belgian companies in the group without VAT.

Establishing a VAT group can result in significant administrative simplifications and cost savings.

VAT rates

- Standard VAT rate is 21%
- Reduced 12% VAT rate applies to supplies of certain goods and services such as phytopharmaceutical products, margarine, inner tubes, pay television, social housing and restaurant services (excluding beverages)
- Reduced 6% VAT rate applies to supplies of goods and services considered basic necessities such as food and pharmaceuticals, passenger transport, hotels and camping, concerts and exhibitions, works of art, copyright, etc.
- Reduced 0% VAT rate applies to newspapers, journals and magazines of general interest, issued at least 48 times a year, and recycled goods or products

Under a grouping regime, separate VAT-taxable persons may be treated as a single VAT-taxable person as long as they are all established in Belgium and closely bound together.

VAT returns

In principle VAT returns must be filed on a monthly basis.

However, if the taxpayer's annual turnover does not exceed €2.5 million and their IC supplies remain below €50.000 per quarter, they can file VAT returns on a quarterly basis. The filing of VAT returns and payment of VAT due must be made no later than the 20th day of the month following the VAT return period (monthly or quarterly). Both monthly and quarterly VAT payers must make a pre-payment before 24th December.

Income tax for individuals

Individuals who have their domicile in Belgium are subject to Belgian income tax on their worldwide income (see Table 4 for rates). Foreign-source income may be tax-exempt, depending on a double tax treaty. Non-residents pay tax only on Belgian-source income. Taxation takes place at the federal and regional (Flanders, Wallonia and Brussels) levels.

Table 4: Income tax rates for income year 2017

Taxable income (€)	Rate
0-11,070	25%
11,070-12,720	30%
12,720-21,190	40%
21,190-38,830	45%
≥38,830	50%

A municipal tax of 0-9% is calculated on the income tax due.

A number of tax deductions and tax-free allowances can be claimed by Belgian resident as well as non-resident taxpayers. These can be related, but not limited to, business expenses, real estate loans, charitable donations, contributions to pension plans and alimony payments. Capital gains derived by private individuals not engaged in business activities, such as on a disposal of shares, are in principle tax-exempt. Exceptions apply if the capital gain is generated by a speculative transaction, sale of real estate within 5 years (8 years for land) or sale of a substantial participation to a non-EEA-established company.

Real estate acquisition tax

A tax of 12.5% is levied on acquisition of real estate in the Brussels or Walloon region. In the Flemish region, the tax amounts to 10% of the acquisition value. A reduced rate is available if specific conditions are met.

Inheritance and gift tax

The Belgian inheritance tax ranges from 3% to 30% in the Brussels, Flemish and Walloon region for descendants, spouses and legal cohabitants. Higher rates may apply for other beneficiaries.

Similar rates apply for gifts of real property.

Gifts of movable property can be done tax-free (with a risk period of 3 years) or at low rates, e.g. 3-7% in the Flemish region (no risk period).

Reduced rates or exemptions are available for shares in family businesses.

Tax considerations for cross-border transactions

Tax treaty network

Belgium has a large double tax treaty network with countries worldwide, avoiding international double taxation issues. Most Belgian double tax treaties adhere to the OECD model tax convention.

Further to implementation of the EU Parent-Subsidiary and Interest-Royalty Directives, no tax is withheld on dividends, interest and royalties paid to companies established in EU (or even non-EU) countries, provided that certain conditions are met (e.g. minimum participation threshold). The default withholding tax rate would be 30% where no withholding tax exemption or reduced treaty rate applies.

Transfer pricing

Belgium has adopted the new transfer pricing documentation requirements from the OECD BEPS action plan.

Foreign companies present in Belgium via a company or permanent establishment need to assess whether they are required to file a master file, local file or country-by-country report with the Belgian tax administration. The new requirements apply for financial years starting on or after 1 January 2016.

All Belgian entities, being either Belgian corporations belonging to a multinational group or Belgian permanent establishments of a foreign company, are required to file a Master and Local File if one or more of the thresholds below were exceeded in the previous financial year. These thresholds need to be assessed on a stand-alone basis:

- Annual average of >100 full-time employees
- Combined operational and financial income exceeds €50 million
- Balance sheet totals more than €1 billion

A large part of the documentation must be filed as an annex to the corporate income tax return. Companies not complying with the documentation requirements face the risk of in-depth and time-consuming transfer pricing audits, tax increases resulting from international double taxation, a reversed burden of proof with respect to the deductibility of costs and, last but not least, administrative fines of up to €25,000.

Banking and Finance

The Belgian banking system is controlled by the European System of Central Banks (ECSB), which comprises the European Central Bank (ECB) and the national central banks (NCBs) of all EU member states. The ECB directly supervises the most significant banks of the participating countries. Banks that are not considered significant are supervised by their national supervisors, in close cooperation with the ECB.

In supervising the European banks, the ECB closely cooperates with the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA). More information can be found at www.bankingsupervision.europa.eu. The most widely represented banks are BNP Paribas Fortis, ING and KBC (or CBC) but all the main foreign banks (e.g. UBS, Deutsche Bank, Morgan Guaranty Trust Co.) are also well represented.

The Belgian Stock Market (founded in 1801) merged in 2000 with Paris Bourse, Lisbon Stock Exchange and the stock exchanges of Amsterdam to form Euronext NV. This is the first pan-European exchange for equities and derivatives, with common trading and clearing of all products, and was renamed Euronext Brussels. The most well-known index on the Brussels Stock Exchange is the BEL20, which now belongs to the Euronext group.

For enterprises not quoted on the stock market, there are a large number of funds set up to provide private equity and venture capital.

The operations of a company can be funded by local subsidies or by securing finance from banks after providing a business plan.

Opening a Belgian bank account requires an identity card or proof of residence, and completion of an application form. Once the account is opened, a debit card with a PIN number will be made available. Some banks allow to open a bank account before moving to Belgium. It is also possible to open a bank account in a foreign currency.

Since the financial crisis in 2008 and the subsequent sovereign debt crisis, Belgian banks have been operating within the European banking union. As a consequence, they are applying new decision-making procedures and tools to create a more transparent, unified and safer financial market. These include risk-adjusted procedures and pricing in their credit policy.

Filing requirements

Belgian companies must file their financial statements annually with the National Bank of Belgium (NBB). These reports must be filed within 6 months of the financial year end and within 30 days after the general shareholders' meeting in this respect. They can be filed online under certain conditions.

Foreign companies with a permanent establishment in Belgium are required to deposit the annual account of their head office and consolidated accounts (together with a social balance sheet of the Belgian permanent establishment if it employs personnel in Belgium) with the NBB.

Reporting Requirements

Accountancy and audit

General Accounting Principles

All Belgian companies and branches of foreign companies are required to keep books and records in accordance with the Belgian accounting law and principles (Belgian GAAP). The board of directors is responsible for the accounting policies and evaluation rules which are applied within the company.

Financial statements must be drawn up every year, including at least a balance sheet and a profit-and-loss account.

As a general rule, the financial year of a Belgian company cannot exceed 12 months, although under exceptional circumstances this period can be extended or shortened.

The financial statements must be drawn up in one of the three official languages (Dutch, French or German), depending on where the company's registered office is located. The bookkeeping must be in euros (unless otherwise authorised by the tax authorities).

Filing of annual accounts

Every year, the board of directors must draw up the annual accounts ≥15 days before the date of the shareholders' annual general meeting (AGM). Following their approval at the AGM, these accounts must be filed with the NBB within 30 days; they are published and publicly available.

Foreign companies with a branch in Belgium are also required to file the annual and consolidated accounts of their head office to the NBB.

Consolidated financial statements

Belgian companies with one or more subsidiaries must file a consolidated version of the financial statements. However, the company shall be exempted from this obligation if the company and its subsidiaries do not, on a consolidated basis, exceed more than one of the following limits:

- Average number of 250 employees during the year (full-time equivalent)
- Annual turnover of €34 million (excluding VAT)
- Balance sheet totalling €17 million

Moreover, the company may also be exempted from drawing up the consolidated accounts if the company itself is a subsidiary of a parent company that already draws up and publishes the consolidated accounts.

Auditing requirements

Belgian companies which exceed more than one of the following criteria during two consecutive financial years must appoint at least one statutory auditor:

- Average number of 50 employees during the year (full-time equivalent)
- Annual turnover of €9 million (excluding VAT)
- Balance sheet totalling €4.5 million

Belgian companies forming part of a group which is required to prepare and publish consolidated financial accounts must also appoint a statutory auditor.

The statutory auditor's report must be made available to the shareholders ≥15 days before the AGM. A copy of the report must be filed along the annual accounts.

The deadline for filing the annual tax return is the end of June of the year following the calendar year in which the income arises.

Tax

Companies

Belgian resident companies

Every Belgian company is required to file an annual corporate income tax return to the tax authorities. This filing is made in the year of assessment, i.e. the year following the calendar year in which the income arises. The deadline for filing depends on the following:

- The financial year end of the company
- The date of the AGM at which the accounts are approved

The corporate income tax return must usually be filed within a period of 6 months from the financial year end. For instance, if the financial year end of the company is 31 December, the corporate income tax return should be filed no later than 30 June of the following year.

The same reasoning applies to the financial years which do not correspond with the calendar year.

Belgian non-resident companies

A foreign company may open a branch in Belgium. In such case, the foreign company will have to file a non-resident corporate income tax return to the tax authorities for the branch and its activities in Belgium.

However, in certain circumstances, a foreign company that has not formally opened a branch might still have to file a non-resident corporate income tax return to the tax authorities (if it is a permanent establishment, as defined by international tax law and treaties).

The deadline to file the non-resident corporate income tax return is similar to that for the resident companies as it depends on:

- The financial year end of the foreign company
- The date of the AGM at which the foreign company's accounts are approved

Individuals

Every Belgian resident individual is required to file an annual income tax return to the tax authorities.

However, in certain circumstances, a Belgian non-resident individual might also have to file an annual income tax return to the tax authorities for Belgian-sourced income.

The financial year for an individual always corresponds to the calendar year (i.e. from 1 January to 31 December), regardless of whether they are resident or non-resident, self-employed or an employee.

The deadline for filing the annual tax return is the end of June of the year following the calendar year in which the income arises. However, this deadline can be extended if the annual tax return is filed online (deadline: July) or by a tax representative (deadline: October).

Grants and Incentives

The Belgian government has always had a strong focus on companies involved in R&D activities and provides support via a large number of tax incentives for employers as well as employees.

Innovative income deduction

As from 1 July 2016, the new Innovation Income Deduction (IID) replaces the former Patent Income Deduction (PID). Companies can now deduct up to 85% of their net innovation income, which may result in an effective corporate tax rate of 5%. Not only granted patents fall within the scope but also copyrighted software and process innovation. The qualifying income comprises royalties and license fees (embedded in sales prices) as well as capital gains. Further to the BEPS Report on Action 5 ('Modified Nexus Approach'), the tax deduction is calculated on the net income and subject to a specific formula.

Patent income deduction

A grandfathering period for qualifying patent income to benefit from the old regime exists until 30 June 2021. Under the PID, companies are entitled to an 80% deduction of their gross patent income from the taxable base.

Wage withholding tax exemption for R&D personnel

Companies that employ R&D personnel benefit from a partial exemption from payment of wage withholding tax. Only 20% of the withholding tax due for research personnel should be transferred to the Belgian tax authorities, provided specific conditions are met. This tax measure results in an immediate tax benefit for the employer.

Investment deduction

R&D-related investments in patents and new assets offer an increased investment deduction of 13.5% of the invested amount or 20.5% of the annual depreciation. The tax deduction may be converted into a refundable R&D tax credit. For tangible asset investments, companies can claim a 4% investment deduction (8% for SMEs).

Regional government grants

Subsidies granted by the Belgian Regional Institutions to support R&D are exempt from corporate tax.

The Belgian government foresees specific tax benefits for foreign executives of multinationals working in Belgium. Foreign executives benefiting from special expatriate tax status are treated as non-residents and are, therefore, only taxable on their Belgian-source income. According to the special expatriate status, certain expatriate allowances or reimbursements of expenses can be claimed, and foreign business travel can be excluded from the taxable basis. Applications should be filed within 6 months following the month of employment in Belgium.

The Belgian authorities provide multiple forms of government grants at the Belgian federal and European levels as well as from the Brussels Capital, Flemish and Walloon regions. Government grants are available for start-up, growth, environment-friendly and innovative industries, among others.

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Agencies Providing Assistance

These are some governmental and private organisations that can assist corporations looking to settle a branch in Belgium:

General information: Belgium
www.belgium.be

General information: Brussels
www.be.brussels

General information: Flanders
www.vib.be

General information: Wallonia
www.wallonie.be

Royal Federation of Belgian Notariat
www.notaris.be

Chamber of Commerce Belgium
www.diplomatie.belgium.be

Business information
www.graydon.be

Agency for Innovation and Undertaking
www.vlaio.be

Building industry
www.confederationconstruction.be

Information about organisations
info@just.fgov.be

Flemish businesses
www.vlaanderen.be

Flemish network of enterprises
info@voka.be

Investment in Flanders
www.investinflanders.com

Crossroad Bank of Enterprises
www.kbopub.economie.fgov.be

Tax
www.financien.belgium.be

EU VAT numbers
www.ec.europa.eu

Postal services
www.employment.belgium.be

Social documents/labour law
www.employment.belgium.be

LIMOSA
www.limosa.be

Work permits
www.werk.be

Professional cards
www.dofi.ibz.be

Belgian salary rates
www.employment.belgium.be

Employers' rights
info@vbo-feb.be

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The Next Step

To discuss your needs, please contact:

Van Havermaet
www.vanhavermaet.be

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Van Havermaet also has offices in Brussels, Geel, Genk, Lommel and Herentals.

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