DOING BUSINESS IN Belgium

HLB Belgium

Contents

1. Foreword

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Up-to-date information and general assistance on international matters can be obtained from any of the member firm partners of HLB Belgium listed in this booklet or from the Executive Office in London.

HLB International
Executive Office

21 Ebury Street
London SW1W OLD
United Kingdom

Telephone: +44 (0)20 7881 1100
Fax: +44 (0)20 7881 1109
Website: www.hlbi.com
Email: mailbox@hlbi.com

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3. General Information

3.1. COUNTRY PROFILE

Belgium is situated at the western edge of Europe, bordered to the north by the Netherlands, to the east by Germany to the south by the Grand Duchy of Luxembourg and to the south and to the west by France. Although its surface area of 30,528 km2 makes it a small country, its location has made it the economic and urban nerve centre of Europe.

Belgium's outstanding location is unparalleled for commercial, distributive and administrative management in Europe. Key strategic positioning with unlimited access is why Belgium has been chosen as the headquarters for the European Union, the North Atlantic Treaty Organisation, and over 1,400 international non-governmental organisations.

The climate is generally mild and changeable.

Belgium is a constitutional monarchy with a federal bicameral parliament. Belgium is divided into three regions: Flanders, Wallonia and Brussels-capital and three cultural and linguistic "communities" (Flemish, French and German). Each region & community has their own parliaments and executives.

The Federal State's authority includes justice, defence, federal police, social security, nuclear energy, monetary policy and public debt, and other aspects of public finances.

Belgium has more than 11 million inhabitants. The biggest cities are Brussels, Antwerp, Ghent and Liège.

Belgium is one of the six founding members of the European Union ("EU") since its inception in 1957, when it was known as the European Economic Community, or EEC.

The EU provides Belgium with a market of more than 456 million customers. As EU member state, Belgium complies with all EU directives and regulations and it follows EU regulations on trade treaties, import regulations, customs duties, trade regulations, etc…

Belgium is also member of the OECD.

Belgium is also a founding member of the General Agreement on Tariffs and Trade (GATT), which is now known as the World Trade Organization (WTO).

Belgium and the Grand Duchy of Luxembourg have established an economic and monetary union, the Belgium-Luxembourg Economic Union (BLEU). Consequently, their foreign trade statistics and balance-of-payments accounts are amalgamated.

Belgium is part of the Benelux, a tariff agreement between Belgium, the Netherlands and the Grand Duchy of Luxembourg, which is considered as a predecessor to the EU.

Belgium has an open economy and a pro-market government, which make Belgium an attractive base for many companies active in European markets.

Belgium offers various financial incentives, including interest rebates and guarantees of loans. In addition, the government offers a wide range of tax incentives to foreign investors. These tax incentives include the notional interest deduction, new measures to prevent double taxation, extension of the parent-subsidiary directive, tax shelter, VAT Unit rulings and several measures in favor of Research and Development (patent income deduction, exemption from wage tax for researchers, deduction for specific investments or tax credit,…).

3.2. LANGUAGE(S) AND CURRENCY

There are three official languages in Belgium: Dutch, French and German.

The official currency of Belgium is the Euro.

3.3. LEGAL SYSTEM

Belgium has a civil law system. Therefore, legislation is, in theory, the one and only primary source of law. Law has been "codified" into specific codes. Although the importance of these codes in everyday legal practice is high, case law and secondary sources are quite important too.

The legal system has been continuously modified, by internal laws and decrees and international treaties.

3.4. BANKING AND FINANCING

The National Bank of Belgium (NBB) is responsible for the oversight of individual financial institutions and the proper functioning of the financial system as a whole.

The NBB also exercises oversight of payment systems and securities settlements systems, overseeing the proper functioning of these systems and ensuring their efficiency and solidity. The NBB has been designated as the financial sector authority.

The supervision of financial markets and consumer protection are the remit of the Financial Services and Markets Authority (FSMA).

The framework for Belgian banking law and capital adequacy requirements is set by the EU.

Major Belgian banks are represented in the financial and commercial centres of numerous countries by subsidiaries, branch offices and representative offices.

Brussels is the financial centre of Belgium.

The same sources of finance in Belgium are available to both Belgian and foreign investors.

4. Investment climate

4.1. FOREIGN INVESTMENTS

The Belgian government does not impose foreign-investment limitations or exchange-control restrictions, resulting in a liberal investment climate. However, the national bank compiles information on cross-border transactions and transactions with nonresidents (including direct investments, securities trades and commercial trades) solely for balance-of-payment reporting purposes.

The few regulations that affect business are generally included in specific laws applicable to food, insurance, leasing, banking, pharmaceutical products and transportation.

The Belgian Ministry of Economic Affairs operates a department that provides information and assistance to foreign investors.

4.2. GOVERNMENT INCENTIVES

Belgium offers a wide range of investment incentives. They can be divided into three different categories: labour-related incentives, financial incentives and tax incentives.

4.2.1. Labour-related incentives

A wide range of labour cost reduction measures are available, financed by both Federal and Regional budgets. They include benefits resulting from the Low Wages Plan, the Inter-professional agreement, industry-specific agreements and training grants. These measures may result in a significant reduction of the overall labour cost.

Citizens of the European Union (EU), the European Economic Area (EEA – EU plus Iceland, Liechtenstein and Norway) and Switzerland can travel freely to Belgium on the basis of their national ID card or passport. EU, EEA and Swiss nationals do not require a visa to travel to Belgium nor a work permit to engage in economic activities.

However, if EU/EEA/Swiss citizens envisage staying longer than three months, they need to register with the Belgian authorities at the local town hall (*maison communale/gemeentehuis*) when they arrive in Belgium and provide evidence that you can support yourself financially and have adequate health insurance.

Third-country nationals (non-EU/EEA/Swiss citizens) need a visa to enter Belgium and a work permit to engage in economic activities.

4.2.2. Financial incentives

The Regions are responsible for the granting of financial incentives. In general, subsidies take the form of an interest rebate, a capital premium or a combination of both, depending on whether the project is financed by a loan, self-financing or a combination of both.

In some areas additional financial incentives are available with the support of EU structural funds. These funds are intended to promote a wide spectrum of desired developments, such as education and employment, export, innovation and technology, etc.

4.2.3. Tax incentives

Both Regional and Federal authorities offer support via direct subsidies and fiscal measures.

While on a Federal level one can benefit from a range of tax incentives (withholding tax exemption, investment deduction, notional interest deduction, patent income deduction, tax shelter for SME …). The Regional authorities provide direct subsidies such as : recruitment premiums, SME portfolio, recruitment premiums, ecology and innovation premiums …).

4.2.3.1. Notional interest deduction

This fiscal incentive was introduced because of the expiring of the coordination centre regime, condemned by EU rules. It is a general measure that cannot be considered to be state aid or discriminating for reason that it applies to each and every enterprise active in Belgium (either a Belgium established company or a Belgian branch of a foreign enterprise). It is meant to stimulate the company's equity. As such the main purpose of the notional interest deduction is to reduce the currently existing discrimination between the main forms of corporate financing, i.e. borrowing (debt financing - interest payments are tax deductible) and equity financing (dividends are included in the taxable base).

The incentive entered into force as from tax year 2007. In principle all companies subject to corporate tax or non-resident taxation can benefit from it.

A notional interest is calculated and deducted yearly from the taxable basis: annual tax deduction = Equity x Rate.

Where equity means the total equity as defined under Belgian GAAP (included retained earnings) in the opening balance sheet of the taxable period and "adjusted" to avoid double use and abuse/ (e.g. capital subsidies)

The rate equals to the annual average of the monthly published rates of the long term Belgian Government Bonds (10-year OLO) of the months July, August and September of the penultimate year prior to the tax year. The rated is fixed yearly. For 2015 (Tax Year 2016, the rate amounts to 1.63% (2.13% SME's). For 2016 (Tax year 2017), the rate amounts to 1.131% (1.631% SME's).

The notional interest deduction cannot be carried forward anymore.

4.2.3.2. Patent income deduction

This is a tax incentive as from January 1, 2007 to encourage R&D and the improvement of patents in Belgium. The patent income deduction amounts to 80% of the income, resulting in a maximum effective rate of 6.8 % on qualifying patent income.

Eligible patents have to be developed in a Belgian or foreign R&D centre that is a company's division or branch of activity. As of 1 January 2013 SME's are exempted from the R&D centre requirement. An acquired patent has to be further developed in the company to be eligible. It is essential that the patented products or services have not been commercialised anywhere in the world before January 1,2007.

The income eligible for the deduction can come from: license payments, royalties, milestone payments or a portion of the turnover of patented products and services.

The patent income deduction is not applicable for natural persons.

The patent income deduction comes in addition to normal tax-deductibility of R&D related expenses and can be combined with the Notional Interest Deduction for invested equity.

Other R&D incentives include:

- An investment deduction of 13,5 % for tax years 2016 and 2017 is available for energy-saving investments, investment in R&D and patents. These investments also can give rise to a spread deduction to 20,5 % of the annual depreciation expense. If there is insufficient profit to take the deduction in full, the deduction may be carried forward but its use in each of the following years will be restricted. Companies can opt for a tax credit for environment-friendly investments in R&D as an alternative to the increased investment deduction.

- A payroll withholding tax exemption of up to 80%, which is granted for qualifying researchers (specific degree, engaged in a R&D programme). As of 1 January 2014 there is a reporting obligation.

If there are insufficient profits, the deduction can be carried forward for an unlimited period.

4.2.3.3. Investment reserves

The investment reserve has been introduced to promote investments. Under certain circumstances and within certain limits, small and medium sized companies can, as from tax year 2004, also benefit from a tax exemption for investment reserves recorded at the end of the taxable period.

As from tax year 2007, companies need to choose between the investment reserve and the notional interest deduction as both incentives cannot be combined. If the company opts for the investment reserve, it cannot benefit from the notional interest deduction for that year and the next two years.

4.2.3.4. Dividend received deduction

Dividends received from a company subject to corporate income tax or a similar foreign tax enjoy a participation exemption that aims at preventing the double taxation of profit distribution.

Under the dividends received deduction, 95% of qualifying dividends received by a Belgian company from domestic of foreign affiliates are normally excluded from the recipient's taxable profits. The remaining 5 % is subject to tax at the normal rate. To qualify for the dividends received deduction, the following conditions must be met:

(i) The shareholder must have at least 10% of the share capital of the payer company or the acquisition value of the participation must be at least € 2,500,000.00.

(ii) The shareholder must continuously have full ownership of the qualifying shares for an uninterrupted period of at least one year.

(iii) The company distributing the dividends must be subject to tax on profits similar to Belgian corporate income tax.

4.2.3.5. Investment deduction

Small and medium-sized enterprises are entitled to an investment deduction, equal to a percentage of the investment cost. The deduction is only available for investments in new assets used for business activities in Belgium.

Both for small and medium-sized enterprises and for large companies, an increased investment deduction applies for patents, investments in research and development or energy saving investments.

All companies, including Belgian branches of foreign companies, employing fewer than 20 persons on the first day of the accounting year may opt for the spread investment deduction that amounts to a certain percentage of the annual depreciation of the asset. Under certain conditions an increased spread investment deduction applies.

4.2.3.6. Tax losses

Losses may, in principle, be carried forward indefinitely for tax purposes by the entity that incurred the losses.

4.2.3.7. “Excess Profit” ruling

Article 185 §2 b) of the Income Tax code makes it possible for multinational enterprises to obtain an advance ruling on the allocation of profits and/or on the at arm's length character of pricing arrangements in the framework of cross border (related) party relations. So enterprises can be granted an advance ruling for downward adjustments e.g. for profits that are shifted from abroad to Belgium and would not have been realized if it were a stand alone enterprise.

The “excess profit” (being that part of the profit exceeding the profit that could have been realized by the Belgian company under arm’s length conditions and which is a result of group synergies) will be excluded from the taxable basis of the Belgian company. A Belgian company may exclude from its taxable income those profits that would not have been realized in a “stand alone” situation. “Excess profits” may be generated by synergies (economies of scale) and/or benefit of intangibles: management skills, access to new markets, client and supplier network, reputation, … .The conditions and calculation of the arm’s length profit for the Belgian company are fixed in a so called “excess-profit” ruling.

However, the European Commission has concluded that selective tax advantages granted by Belgium under its "excess profit" tax scheme are illegal under EU state aid rules.

4.2.3.8. Liquidation reserve

As from tax year 2015, SME’s are allowed to allocate part or all of their accounting profit to a liquidation reserve. This reserve needs to be booked in an unavailable equity account (which cannot serve as basis for any distribution or remuneration) and will be subject to a separate 10% tax (which is not deductible).

No additional taxation (withholding or personal tax) will be due provided this reserve is maintained until liquidation and hence distributed as a liquidation bonus. On the other hand, to the extent that the reserve is distributed as a dividend during the first 5 years, an additional 17% withholding tax will be due and in case of dividend distribution after 5 years (but before liquidation), an additional 5% tax will be due. The FIFO principle will apply for any withdrawal from the liquidation reserve: the oldest reserves will be deemed withdrawn first.

4.3. LABOUR ENVIRONMENT

Belgium has a reliable and stably operating labour market with well trained, motivated and usually multilingual workforce at every level.

Belgian labour law includes laws on the terms of employment, wages and rules on health and safety. Many of these laws derive from EU legislation and collective bargaining agreements that are binding by Royal Decree.

Companies with more than 100 employees must have a works council. Companies with more than 50 employees are obliged to set up a Committee for Prevention and Labour Protection at the workplace.

On top of the net wage, considerable social security contributions and withholding tax must be paid. Employees are ensured a minimum wage. Minimum wages vary considerably by sector. There are 10 public holidays, and all employees are entitled to four weeks of annual holiday with pay, as well as a holiday bonus.

Each employee has an employment contract. There is the presumption in law that employment is always for an indefinite period. The circumstances under which an employee may be employed for a fixed term are prescribed.

Trade union membership is not compulsory in Belgium.

At any time, both employer and employee can end the employment relationship of an indefinite duration. Strict rules apply for individual (e.g. notice periods) and collective redundancies (e.g. information and consultation of the works council)

Before working and residing in Belgium, foreign nationals need to fulfill some ‘immigration’ formalities depending upon the nationality and the employment situation of the foreign national. Except for Swiss and other EEA citizens, an employer must first apply for a work permit for his employee. Work permits are issued when it is impossible to find a suitable local employee on the labour market within a reasonable time.

Special provisions exist for highly qualified employees and executives.

Upon arrival in Belgium all foreign nationals need to register with the Belgian communal authorities if they will reside in Belgium for a period of more than three months.

An individual employed in Belgium by an employer with a business establishment in Belgium is entitled to benefit from the Belgian Social Security System. The EU social security regulations and bilateral social security treaties must be considered when deciding whether foreign employees are subject to Belgian social security law or not.

5. Setting up a business

5.1. PRINCIPAL FORMS OF BUSINESS

Foreign investors are free to operate through any form of business entity recognized under Belgian law. There are various types of business organizations in Belgium, each with their distinct characteristics.

The principal forms are:

- The limited liability company (*SA/NV – Société Anonyme/Naamloze Vennootschap*)
- The private limited liability company (*SPRL/BVBA – Société à responsabilité limitée – Besloten vennootschap met beperkte aansprakelijkheid*)
- The cooperative limited liability company (*SCRL/CVBA - Société cooperative à responsabilité limitée – coöperatieve vennootschap met beperkte aansprakelijkheid*)
- Partnerships (*SNC/VOF – société en nom collectif / vennootschap onder firma of SCS/Comm. V. – société en commandite/gewone commanditaire vennootschap*)

A limited liability company (*société anonyme/naamloze vennootschap*) is a company in which at least two shareholders are willing to invest capital. In Belgium, SA/NV status is mainly favoured by large enterprises, although it is also popular with SMEs. Unlike in partnerships (sociétés de personnes/ personenvennootschap-pen such as the SNC/VOF and the SPRL/BVBA), the shareholders generally play a minor role in public limited liabilitycompanies.

The minimum initial capital of an NV/SA amounts to € 61,500.

The private limited liability company (*société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid*) is formed by one or more people whose commitment is limited to their contribution. The rights of shareholders are only transferable under certain conditions. The minimum initial capital of an BVBA/SPRL amounts to € 18,550.

Given the limited liability of the shareholders, the SPRL/BVBA also shares some of the features of a stock company. It can issue shares and bonds, which are registered. However, it cannot issue profit-sharing certificates (*parts beneficiaries/winstbewijzen*). It is the only type of company that can be set up by a single individual. The founders have special liability. The SPRL/BVBA is essentially based on a relationship of trust among the specific members. For this reason, the shares of a private limited company are registered shares and their transferability is restricted.

Since 1 January 2008, SAs/NVs can not issue bearer shares.

A cooperative company with unlimited liability (*société coopérative à responsabilité illimitée/coöperatieve vennootschap met onbeperkte aansprakelijkheid*) is made up of partners, whose number and contributions may vary. There is no minimum amount, but the partners must contribute to the SCRL/CVOA the full amount that they pledged to invest in the articles of association. The articles of incorporation may also take the form of a notarial deed, although this is not compulsory.

The election of directors is determined by the rules in the articles of the bylaws.

An ordinary limited partnership (*société en commandite simple/gewone commanditaire vennootschap*) is a company comprising one or more jointly and severally liable partners, known as the managing partners (commandités/beherende vennoten), and one or more financial backers who act as limited partners (commanditaires/stille vennoten). This type of company is suitable for people who, for example, wish to open a shop (as active partners or managers) but do not have sufficient capital.

A general partnership (*société en nom collectif/vennootschap onder firma*) is entered into by partners who are jointly and severally liable. Its purpose is to carry on a civil or commercial activity under a corporate name. The SNC/VOF is a *société de personnes/personen-vennootschap* (partnership of individuals) in the full sense, which means that:

- the death of one of the partners results in the company being wound up;
- the partners can neither sell nor give away their stakes without the agreement of the other partners;
- all decisions must be taken unanimously.

The partners are jointly and severally liable for all commitments entered into by the company, provided that these commitments were made under the corporate name and signed by at least one of the partners. If the SNC/VOF goes bankrupt, the partners are also declared bankrupt.

An SNC/VOF is incorporated by drawing up a registered private deed (acte sous seing privé/onderhandse akte). All business documents issued by the company must clearly indicate that the company is an SNC/VOF. The SNC/VOF is subject to corporation tax.

This type of company may be an effective form of partnership between people in the liberal professions. It is also suitable for complementary activities performed by self-employed people as well as for joint ventures.

The Societas Europaea or SE company form also is available. The SE is designed to enable companies to operate across the EU with a single legal structure, to facilitate mergers and create flexibility for companies wanting to move their head office from one EU state to another.

Companies of two or more EU member states are permitted to merge to form an SE or create an SE holding company or branch. A company may convert an existing firm to SE status without liquidating. One advantage of an SE is that is possible to move headquarters to another EU member state with minimal formalities.

Businesses can establish as a (European) Economic Interest Grouping ((E)EIG).

Economic Interest Groupings are companies with partial legal personality which allow enterprises to set up a legally independent cooperation entity with the aim of facilitating, streamlining and developing their economic activities. The partnership must be related to the economic activity of its member companies and must play a supporting role (e.g. joint accounting or prospecting). This form of association cannot be used to establish a new enterprise or to combine all the activities of its members.

A European Economic Interest Grouping is a structure that allows companies to found a legally independent cooperation entity with the aim of facilitating, streamlining and developing their economic activities. The partnership must be related to the economic activity of its member companies and must play a supporting role (e.g. joint accounting or prospecting). This form of association cannot be used to found a new enterprise or to combine all the activities of its members.

The difference between the European Economic Interest Grouping (EEIG) and the Economic Interest Grouping (EIG) is that the EEIG, unlike the EIG, must comprise entities from different European Union Member States. The EEIG is fiscally transparent: it is not deemed to have legal personality for income tax purposes, so that its results are only taxable as profits or benefits derived by its members.

A EEIG can be incorporated by **private deed (acte sous seing privé/onderhandse akte)**. Its articles of incorporation may also take the form of a **notarial deed (acte notarié/notariële akte)**, although this is not compulsory.

Foreign investors are free to operate through any form of an business entity.

Branch of a foreign company - Foreign companies may establish Belgian branches. Branches are governed by the same rules as Belgian companies as regard to their management and operations in Belgium. Branches in Belgian are subject to the standard corporate income tax rate.

A Belgian branch must be registered in the Crossroads Bank for Enterprises (company number) before starting business and must file with the commercial court a certified copy of the bylaws of its head office (or certified translation); a certified copy of the board of directors' decision to set up the Belgian branch; a list of the powers delegated to the legal representative that it must appoint for the corporation in Belgium; the address and activities of the Belgian branch; and the most recent annual and consolidated accounts of the foreign head office. Companies from outside the EU must indicate under which country's law they fall and their registered capital.

A branch also must obtain a company number (for VAT and social security purposes) before commencing business. It must submit annually information on the profits, directors and auditors to the Belgian central bank, together with the company's annual and consolidated accounts. A brief statement of the deposit must be published in the Belgian Gazette.

Foundations - The Belgian private foundation is a relatively new type of entity. It was introduced in the Belgian legal system with the Act of 2 May 2002. With this Act, the Act of 27 June 1921 that had already dealt with Belgian not-for-profit organizations and so-called institutions of public interest was amended and completed with a separate chapter on foundations.

A foundation is created by way of a legal deed and does not have any shareholders (unlike a Belgian company) or members (unlike a Belgian not-for-profit organization). By this deed one or more founders transfer property to a separate legal entity designated to pursue a specific disinterested purpose. A foundation is not entitled to make any distributions to its founder(s), directors, or third parties. However, in the latter case a distribution is permitted provided this distribution falls within the scope of the foundation's purpose. Moreover, directors may be remunerated for services rendered in their capacity of director. A foundation is thus essentially a special purpose property unit (assets and liabilities) with a separate legal personality that is used to pursue a specific disinterested purpose. It is important to note that a private foundation may own shares in both Belgian or foreign companies.

A private foundation must be established by notary act. The bylaws must mention the disinterested purpose of the private foundation as well as its name and address. The identity of the founders has also to be disclosed. The bylaws must precisely set out the purpose of the private foundation and they must give an indication of the activities that will be deployed to pursue that purpose. They should also provide for the rules under which they can be modified. A private foundation must have a minimum of three directors (either individuals or legal entities). The rules for their appointment and dismissal should be set out in the bylaws. The bylaws should also describe what would be the destination of the assets of the private foundation upon its dissolution. The bylaws and the appointments/dismissals of the directors must be published in the Annexes to the Belgian Official Gazette. As from the date of that publication, these appointments/dismissals are enforceable against third parties.

The accounting requirements for private foundations are dependent on whether they qualify as small, large, or very large.

A private foundation may develop economic activities insofar as they are a means to realize its disinterested purpose.

A private foundation is subject to a yearly 'tax in lieu of inheritance taxes'. This tax is based on the value of its assets. A number of exemptions apply, such as foreign real estate and (subject to certain conditions) stock held by a private foundation in the framework of a certification agreement. No deduction of debts is allowed. Again a number of exemptions apply, for example, certain unpaid instalments of mortgage loans on the real estate property of the foundations. The tax in lieu of inheritance taxes is levied at a rate of 0.17 per cent.

5.2. LEGAL, ACCOUNTING AND AUDIT REQUIREMENTS

The procedures for setting up any type of company include registration with a notary public/execution of a deed before a notary, submission of a business plan and registration with the Crossbanks Bank for Enterprises. The registration number (company number) with the Crossbanks Bank for Enterprises will also be the company's VAT number. This company number must be used in all communications with other business or individuals. Each company must file its articles of incorporation and the names of its directors and statutory auditors at the office of the clerk of the Commercial Court. After such filing, the company becomes a separate legal entity.

The annual accounts of Belgian companies must be drafted in accordance with Belgian GAAP (Generally Accepted Accounting Principles).

Financial statements must be submitted annually to the National Bank. Large companies must publish full annual financial statements (balance sheet and income statement) complying with accounting rules in the EU Fourth Directive or with International Financial Reporting Standards (IFRS). Small companies, as defined in Article 15 of the Companies Code, may publish accounts in a simplified form.

Foreign companies with a branch in Belgium are required each year to deposit with the National Bank of Belgium a copy of the annual accounts of the head office and consolidated accounts (together with a social balance sheet of the Belgian permanent establishment, if it employs personnel in Belgium).

In principle, financial statements must be audited by a statutory auditor.

5.3. Works Council

A Works Council is primarily a consultation body between employer and employees.

Works councils should be set up in all workplaces with at least 100 employees.

A works council has both elected employee members and representatives of the employer, although there can never be more employer than employee representatives.

The role of a works council is essentially to be informed and consulted about a range of economic and employment issues, although it does have some limited decision making powers.

The law lays down rules on how often different types of information should be provided. On economic and financial issues, a range of basic information on the general position of the business - such as market share, financial structure, production levels and future prospects - must be provided every four years, when the works council is newly elected. This information, together with the financial results, is updated on an annual basis, and every three months the management must present the current position and indicate how it diverges from its plans. Information on new economic or financial developments that could seriously affect the business must be presented to the works council without delay. The works council can ask for the help of the auditor, who in any case should give the works council a report on the annual accounts.

Each year the business must also provide the works council with a social balance sheet setting out: the number and type of people employed, joining and leaving; details of any employment creation measures; and information on training.

The employer must consult the works council on cases of mergers, closures, business transfers, large scale redundancies, training plans and the introduction of new technology, as well as any other major developments likely to have an impact on employment.

The decision-making power of the works council is more limited. It includes: introducing or changing works regulations; the general criteria for redundancy and re-hiring; the timing of annual and other holidays; and the management of social benefits, including pension funds, as well as canteens and sports clubs. The works council also chooses the auditor, potentially a check on management.

There are also separate bodies for health and safety elected by the whole of the workforce, provided there are more than 50 employees. Where there are between 50 and 100 employees, these health and safety committees also have information and consultation rights on economic and social issues, where there are between 50 and 100 employees.

6. Taxation

6.1. CORPORATE TAXATION

6.1.1. Overview

The principal taxes affecting companies are corporate income tax, payroll taxes on remuneration paid to employees and directors, VAT, transfer tax, insurance premium tax and, depending on the location of the company, certain regional or local taxes. Belgium does not levy excess profits or general alternative minimum taxes. In some cases, specific "minimum taxes" may apply, such as where a taxpayer receives abnormal or benevolent advantages; or cases in which the secret commissions tax, the 0.412% (including surcharge) tax on otherwise tax-exempt capital gains on shares realized by large enterprises or the 5.15% (including surcharge) fairness tax on large enterprises apply.

As noted earlier , Belgium offers a number of tax incentives.

Legislation on income taxation is largely contained in the Income Tax Code and the code is supplemented by specific legislation and Royal Decrees. The power to levy taxes is vested in parliament. However, a law must be signed by the King before it can enter into force; the law is then published in the Official Gazette.

The government deals with tax matters through the Ministry of Finance. The tax administration comprises authorities at the federal, regional and local levels.

Belgium has implemented EU directives, including the parent-subsidiary, interest and royalties, and merger directives, as well as the savings directive, which requires the exchange of information between tax administrations when interest payments are made in one EU member state to an individual resident in another member state.

6.1.2. Residence

A corporation is resident in Belgium if its principal establishment, registered office or place of management is in Belgium

6.1.3. Taxable income and rates

A resident company is liable to corporate income tax on its worldwide profits and income, including capital gains.

A nonresident company is taxed only on Belgian-source income.

A nonresident company without a permanent establishment in Belgium is liable for a final withholding tax on Belgian-source dividends, interest and royalties and on the nonresidents tax on Belgian real estate income.

Certain other payments made to nonresident companies or individuals without a Belgian permanent establishment or a Belgian establishment (as defined under domestic legislation), may, under specific circumstances, be subject to a withholding tax.

The corporate tax rate applies to both subsidiaries and branches.

The standard rate is 33% (plus a 3% crisis surcharge, resulting in an aggregate tax rate of 33.99%).

Nonfinancial companies with taxable income of less than EUR 322, 500 pay 24.25% tax on profits of up to EUR 25,000, 31% on profits between EUR 25, 000 and EUR 90, 000 and 34. 5% on profits between EUR 90,000 and EUR 322,500 (all rates have to be increased by the 3% crisis surcharge). To be eligible for the special rates, these company must satisfy certain legal conditions.

Taxable income - The taxable income of a resident company comprises its annual worldwide income, less allowable deductions. Income derived by a resident company from foreign real estate or branches located in countries with which Belgium has concluded a tax treaty is exempt.

Dividends received from a company subject to corporate income tax or a similar foreign tax may benefit from a participation exemption that aims at preventing the double taxation of profit distributions (see 4.2.3.4 – dividend received deduction).

Deductions - Companies can deduct all legitimate and arm's length business expenses when calculating taxable income.

Some expenses are however not or only partly tax deductible, for instance car costs, restaurant expenses, gifts, penalties, etc.

Interest generally is deductible up to an arm's length amount. Interest paid to a non-EEA beneficial owner that is a tax-exempt company or a company for which interest income is subject to a tax regime substantially more advantageous than in Belgium, is tax deductible only if the company demonstrates that the debt relates to "real and genuine" transactions and the conditions of the debt are not abnormal.

An interest deduction also will be disallowed to the extent the total tainted debt and all intragroup loans exceed five times equity. The '5:1 thin capitalization rule' provides for some limited exceptions.

Payments made directly or indirectly to tax havens (as determined by OECD) are not deductible if they are not properly reported on the special form to be annexed to the annual corporate income tax return. They may still not be deductible if the taxpayer fails to demonstrate that the payments are made within the framework of "real and genuine" transactions with persons.

An investment deduction of 13.5% for tax year 2017 can be taken for energy-saving investments, investment in R&D, investments in some extraction or ventilation systems in hospitality and patents, for investments for the promotion of reusable packaging there is an investment deduction of 3%. For SME's there is an investment deduction of 13.5% for digital investments. If there is insufficient profit to take the deduction in full, the deduction may be carried forward. Companies can opt for a tax credit for environment-friendly investments in R&D as an alternative to the increased investment deduction.

Some employee benefits are not deductible. Employer-funded pension contributions generally are deductible for a pension designed to pay no more than 80% of final salary.

First-year **depreciation** is based on the number of days for which an asset has been held, except for SMEs, which benefit from full first-year depreciation. The straight-line method normally is used. Permission must be obtained from the tax authorities to use the double declining balance method. Depreciation under the double declining balance method may not exceed 40% of the value of the asset and the method may not be used for intangibles, cars or goods leased to third parties.

The **fairness tax** is nondeductible, whereas the secret commissions tax constitutes a deductible expense. From the 2014 tax year, fairness tax at a rate of 5.15% (5% plus 3% crisis surcharge) is payable by both resident and nonresident companies if, for the same taxable period, a company distributes dividends and the taxable base is reduced by previous year tax losses or current year notional interest deduction. According to the European Commission, the Belgian fairness tax is not compliant with the EU Parent – Subsidiary Directive and with the EU principle of freedom of establishment.

The new Belgian government continues to defend the Fairness Tax vis-à-vis the European Commission and before the Belgian Constitutional Court. The Constitutional Court may likely request a preliminary ruling of the Court of Justice of the European Union (ECJ). The ECJ will have the last word.

The **secret commissions' tax** on non-reported costs and benefits will be due when the identity of the beneficiary is not known to the tax authorities and apply to hidden excess gains ("verdoken meerwinsten/bénéfices dissimulés") that cannot be found in the company's equity.

The secret commissions' tax will be due on non-reported costs and benefits, unless (1) the taxpayer demonstrates that the amount of these costs and benefits is included in a tax return filed on time in Belgium or abroad or (2) the beneficiary of the payment is unambiguously identified at the latest within a period of 2 years and 6 months following 1 January of the tax year of payment. The secret commissions' tax rate will be equal to 103% (or to 51.5% for payments made to a legal entity), unless there is a reintegration in the accounts, in which case the rate will be equal to 51.5%. Upon such spontaneous reintegration no tax increase, administrative penalty or criminal sanction will be due. The tax, remains, in principle, tax deductible.

Losses - Losses may be carried forward indefinitely for tax purposes by the entity that incurred the losses. Losses may not be carried forward if control of a company changes, unless the change of control can be justified by legitimate financial and economic needs. In the case of a tax-neutral reorganization (merger, split, etc.), losses can be transferred from one entity to another. However, losses will be reduced according to a formula based on the net fiscal value of all companies involved. Tax losses carried forward may not be offset against profits derived from "abnormal or benevolent advantages" received directly or indirectly from related companies, nor against a limited number of other taxable items, including as from tax year 2014, capital gains on shares realized by large enterprises that are taxable at the rate of 0.412% (including surcharge).

6.1.4. Capital gains taxation

Capital gains derived by companies from the sale of tangible and intangible fixed assets generally are fully taxable at the normal corporate tax rate (capital gains on passenger cars are partially exempt).

However, taxation of capital gains on such assets can be deferred if the assets were held for more than five years prior to disposal and the entire sale proceeds are reinvested in qualifying assets within three years. In the case of a qualifying reinvestment, the tax due will be spread over the life of the asset in which the sale proceeds have been reinvested.

Capital gains from fixed income securities are taxed as profits. However, gains derived from shareholdings in other companies are exempt if: (1) the shares meet the "subject to tax" requirement for application of the dividends received deduction; and (2) the shares have been held in full ownership for an uninterrupted period of at least one year. If the one-year holding period is not met, the capital gains will be subject to a separate tax at a rate of 25.75% (including the crisis surcharge).

As from tax year 2014, a separate tax of 0.412% (including the crisis surcharge) is levied on the net amount of fully tax-exempt capital gains derived by large enterprises from shareholdings in other companies.

A 27% withholding tax is imposed on a distributed surplus over paid-up capital when a company is wound up. The tax is not due if the parent company is headquartered in the EU (because the distribution is classified as a dividend and is covered by the EU parent-subsidiary directive as implemented in Belgium), or in a non-EU country that has a qualifying applicable tax treaty with Belgium.

6.1.5. Double taxation relief

Belgium provides relief from double taxation of foreign-source income either by exemption, credit or tax reduction, depending on the type of income.

Belgium has a broad tax treaty network, with most treaties following the OECD model treaty. Belgium is implementing the OECD initiative on exchange of information, either through the conclusion of new tax treaties or protocols to existing tax treaties or through separate tax information exchange agreements.

6.1.6. Anti-avoidance rules

6.1.6.1. Transfer pricing

Belgium's transfer pricing legislation incorporates OECD definitions for cross-border transactions with associated companies when both are part of a multinational group, and between parent companies and their subsidiaries.

Transactions between a parent company or other subsidiaries and the Belgian subsidiary, or between the head office or other branches of a foreign company and the Belgian branch, must be carried out at arm's length and relate to a genuine transactions.

6.1.6.2. Thin capitalization

A 5:1 debt-to-equity ratio applies for financing where the beneficial owner of the interest (i) is not subject to tax or the income is subject to a tax regime that is significantly more advantageous than the Belgian tax regime; or (ii) is part of the same group of affiliated companies.

6.1.6.3. Anti-avoidance rules

Under the general avoidance rule, applicable from the 2013 tax year onwards, the tax authorities are required to show, based on objective circumstances, that tax abuse exists. Tax abuse will arise where a taxpayer carries out a transaction that allows it to avoid tax or claim a tax benefit that is contrary to the legislative intent of the law, unless the transaction can be justified by motives other than tax avoidance, i.e. that the taxpayer's choice is "essentially" motivated by nontax reasons.

6.1.7. Administration

Belgium provides relief from double taxation of foreign-source income either by exemption, credit or tax reduction, depending on the type of income.

6.1.7.1. Tax year

The taxable period coincides with the accounting year.

6.1.7.2. Filing and payment

In principle, the tax return must be submitted at least one month after the date the financial statements are approved by the annual general meeting of the shareholders but no later than six months after the end of the financial year. Upon request, the tax authorities can grant an extension to this filing date.

Corporate tax is prepaid on a quarterly basis. Penalties are imposed if advance payments based on estimates of the current year's income are not made or if they are insufficient. Tax prepayments are due 10 days (or the first working day thereafter) after the first, second and third quarters of a company's financial year, and within 20 days of the beginning of the last month of the financial year.

Underpayment is penalized by a surcharge (based on the 1.125% for tax year 2016; 1.69% for tax year 2015). If prepayment results in overpayment once the final tax liability is calculated, the difference may be carried forward or may be reimbursed upon request.

Administrative penalties for noncompliance with the tax legislation range from 10% to 200% of the tax due; criminal sanctions may apply in cases of tax fraud.

6.1.7.3. Taxation period

A corporate tax file remains open for audit, assessment and collection for three years (seven years in the case of tax evasion), starting from the day following the closing of the accounting year.

6.1.7.4. Rulings

A taxpayer may file a written request for a binding advance ruling on the tax consequences of a proposed transaction with the Tax Rulings Office. A ruling is binding on the Belgian tax authorities but not on the taxpayer and the taxpayer is not required to carry out the transaction. Rulings are not binding if the conditions for application are not satisfied or if the facts are not described accurately.

6.2. TAXATION OF INDIVIDUALS

6.2.1. Residence

Individuals residing in Belgium are subject to personal income tax, as well as withholding tax, social security, inheritance and gift tax and municipal taxes. An individual is resident in Belgium if his/her domicile or seat of wealth is located in Belgium. The tax residence of a married taxpayer is the place where the actual family residence is located.

6.2.2. Taxable incomes and rates

The personal tax system is progressive, with a maximum marginal rate of 50% applicable to income exceeding EUR 37,780 (tax year 2016; income year 2015) and EUR 38,080 (tax year 2017, income year 2016) as well as additional local taxes and municipality surcharges of 0%-9% (averaging around 7%) .

Residents are taxed on their worldwide income, including income from employment and the exercise of a profession and income from real estate, securities and other capital investments. Foreign-source income may be exempt based on a tax treaty. There is also a presumed rental income for property held in Belgium

Capital gains derived from the sale of shares are tax-exempt for an individual, except (1) if the individual has been trading to such an extent that the gains effectively constitute professional income; (2) if the gains go beyond the normal management of an individual's private estate (tax rate of 33% (increased by the municipal surcharge)) or (3) Capital gains derived from the transfer of shares from a resident company to a legal entity established outside the EEA will be taxable if, in the five years preceding the transfer, the person disposing of the shares had a substantial participation in the resident company.

Gains on the sale of immovable property are exempt in Belgium unless the gains originate from the sale of immovable property within five years (buildings) (excluding ta person's own home) or eight years (land) from the date of purchase.

In this case, the gains are taxable at 16.5% (buildings) and 16.5%/33% (land)

(increased by the municipal surcharge).

The general withholding tax rate on dividends is 27%, although the rate is reduced to 15% or 20% for certain categories of SME shares, and to 27% for liquidation distributions from 1 October 2014.

The general withholding tax rate for interest is 27%, although a reduced rate of 15% is applicable in certain limited situations. Income from regulated savings deposits up to EUR 1,880 benefits from a withholding tax exemption.

Belgium has an attractive special tax regime for foreign nationals working in Belgium offering significant benefits and decreasing the cost of employing individuals in Belgium. These benefits are (1) Employment income is only taxable to the extent that it relates to activities performed in Belgium, Remuneration relating to days worked outside of Belgium is not taxable in Belgium (travel exclusion); (2) Expatriate allowances or expense reimbursements are (partially) tax free.

The expatriate allowances or expense reimbursements received by the employee to cover the costs incurred as a result of the employment in Belgium will not be considered as taxable income. Non-recurring expenses (moving costs, installation costs) are not subject to Belgian income tax without any ceiling (if conditions are fulfilled). Recurring allowances or expenses paid during the employment in Belgium (cost of living differential between Belgium and the home country, housing differential, the difference in income taxes, annual home leave, etc…) are in principle tax free subject to an annual ceiling of EUR 11,250 or EUR 29,750. The higher ceiling of EUR 29,750 is applicable for activities of a controlling or coordinating nature or for scientific research.

School fees paid or reimbursed by a company are not considered as taxable income (without any ceiling) (if conditions are fulfilled).

Individual taxpayers are permitted to make a number of deductions from gross income, including business expenses (lump-sum or actual) and social security contributions.

If the taxpayer's spouse does not work, 30% of the main earner's income may be allocated to the spouse and taxed in the hands of the spouse, up to a maximum of EUR 10,230 for tax year 2016 (income year 2015) and EUR 10,290 for tax year 2017 (income year 2016) at the rate applying to that level of income or that income combined with the other person's earned income.

A personal allowance is granted to a taxpayer and the taxpayer's dependents. The basic lump sum amounts to 7.130,00 EUR for the tax year 2017 and is increased in case of dependent children.

Federal tax credits are available for some expenses (e.g. premiums for endowment-type life insurance policies and contributions to pension plan savings, within certain limits); expenses related to charitable donations, childcare (up to the age of 12); capital and interest reimbursement for mortgage loans under certain conditions.

Regional tax credits are also available for some expenses (e.g. costs for prevention against burglary; service vouchers, etc…). The regional tax credits vary from region to region.

6.2.3. Tax year – tax filing

The tax year in Belgium is the same as the calendar year – 1st January to 31st December.

All individuals resident in Belgium and non-resident individuals taxed on Belgian-sourced income are required to file an annual tax return.
The government, in principle, issues a tax return form to each taxpayer.

6.2.4. Inheritance and gift taxes

Inheritance tax ranges from 3% to 30% for spouses and direct descendants in the Walloon and Brussels regions and from 3% to 27% in Flanders. Lower rates apply in some cases to residences in the Walloon and Brussels regions. In the Flemish region, no inheritance tax is due when the family home is inherited by the spouse or the legal cohabitant of the deceased. Higher rates (up to 80% in Wallonia and Brussels and 65% in Flanders) apply to inheritances from more distant relatives and unrelated beneficiaries.

Similar rates apply for gift taxes related to gifts of real estate. Gifts of movable property are subject to flat gift tax rates ranging from 3% to 7,7%; for immovable property, the rates range from 3% to 50%. A beneficial gift tax regime is applicable for land on which property will be constructed.

6.3. OTHER TAXES

6.3.1. Indirect taxes

6.3.1.1. VAT

VAT is levied on the provision of most goods and services. The standard VAT rate is 21%, with reduced rates of 0%, 6% and 12% applicable in certain cases.

Imports for consumption in Belgium are subject to the same VAT rates as domestic products. VAT is not levied on exports.

Under a VAT grouping regime, separate VAT taxable persons may be treated as a single VAT taxable person to the extent the taxpayers are established in Belgium and "closely bound together" in accordance with the Belgian definition. Companies in a VAT group may invoice other Belgian companies in the group without charging VAT.

6.3.1.2. Real estate tax

An annual tax applies to the presumed annual rental income of owned land, buildings and industrial equipment. The tax is, in principle, equal to a percentage of the notional rental value of the property and may vary by region. In the Flemish region, the tax is 2.5% of the cadastral income (i.e. annual deemed rental income). For buildings in the Walloon and Brussels regions, the tax is 1.25% of the assessed value. Provinces and municipalities are entitled to levy local surcharges.

Registration duties apply to the transfer and leasing of real estate located in Belgium, at rates ranging from 0.2% to 12.5% (depending on the nature of the transfer and/or the region in which the property is located).

6.3.2. Withholding taxes

6.3.2.1. Dividends

Dividends distributed by a Belgian resident company to a nonresident are, in principle, subject to a 27% withholding tax, unless the rate is reduced under one of Belgium's tax treaties.

According to Belgium's implementation of the EU parent-subsidiary directive, no tax is withheld on dividends paid to a company established in Belgium or in another EU member state that holds at least 10% of the company paying the dividends, provided the participation is held for an uninterrupted period of at least one year and certain other conditions and formalities are satisfied.

Belgium has unilaterally extended the benefit of the directive to parent companies located in non-EU countries, provided the country where the parent company is resident has concluded a tax treaty with Belgium that contains an exchange of information provision.

6.3.2.2. Interest

Interest paid to a resident or nonresident generally is subject to a 27% withholding tax, unless the rate is reduced under a tax treaty or the EU interest and royalties directive applies.

Under Belgium's implementation of the EU interest and royalties directive, provided certain formalities are fulfilled, interest paid is exempt from withholding tax provided the recipient is an associated company of the payer company and is resident in another EU member state or is a permanent establishment of such a company situated in another member state.

6.3.2.3. Royalties

The withholding tax on royalties is 27% of the gross amount as reduced by a standard expense deduction of 15%.

The rate is 15% for income from literary and associated rights and from legal and compulsory licenses not exceeding EUR 57,590 (for tax year 2017).

Under Belgium's implementation of the EU interest and royalties directive, royalty payments are exempt from withholding tax provided the recipient is an associated company of the payer company and is resident in another EU member state or is a permanent establishment of such a company situated in another member state.

6.3.2.4. Wage tax/social security contributions

A payroll tax must be withheld on remuneration and pensions paid to resident and nonresident employees and directors if certain requirements are met. Partial payroll tax exemptions are available for certain types of employees (e.g. researchers and sportsmen) or types of employment (e.g. overtime work, night work and shift work).

Employer social security contributions equal approximately 40.58% of 1.08 times gross salary for blue collar employees and approximately 34.58% of the gross salary of white collar employees. However, the level of employer contributions varies depending on the size and industry of the company, as well as the wages of the employee.

7. HLB in Belgium: How to contact us

HLB Belgium	GMT + 1 March-Sept +2
HLB Belgium Chaussée de la Hulpe / Terhulpsesteenweg 166 B-1170 Brussels Tel +32 (0)2 737 03 21 Fax +32 (0)2 736 48 17 Email: info@hlb.be **International contact partner:** Patrick Van Impe patrick.vanimpe@hlb.be	

Brussels	GMT + 1 March-Sept +2
HLB Belgium Chaussée de la Hulpe / Terhulpsesteenweg 166 B-1170 Brussels Tel +32 (0)2 735 41 45 Fax +32 (0)2 736 48 17 Email: brussels@hlb.be **International contact partner for tax matters:** Pascal Dechamps pascal.dechamps@hlb.be	

Liège	GMT + 1 March-Sept +2
HLB Belgium Bâtiment L, Quai des Vennes 18-20 B-4020 Liège Tel +32 (0)4 221 79 69 Fax +32 (0)4 223 58 12 Email: liege@hlb.be **International contact partner:** André Garnier andre.garnier@hlb.be	

Charleroi	GMT + 1 March-Sept +2
HLB Belgium Chaussée de Courcelles 101 B-6041 Gosselies Tel +32 (0)71 34 47 38 Fax +32 (0)71 34 56 68 Email: charleroi@hlb.be **International contact partner:** Gaston Pirotte gaston.pirotte@hlb.be	

Antwerp	GMT + 1 March-Sept +2
HLB Belgium Roderveldlaan 3 B-2600 Antwerpen (Berchem) Tel +32 (0)3 449 97 57 Fax +32 (0)3 440 79 09 Email: antwerpen@hlb.be **International contact partner:** Patrick Van Impe patrick.vanimpe@hlb.be	

Kortrijk	GMT + 1 March-Sept +2
HLB Belgium President Kennedypark 31 A B-8500 Kortrijk Tel +32 (0)5 625 57 68 Fax +32 (0)5 620 21 61 Email: kortrijk@hlb.be **International contact partner:** Christian Van Praet christian.vanpraet@hlb.be	

HLB Belgium

+32 (0)2 737 03 21 - info@hlb.be

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