

DOING BUSINESS IN BELGIUM

January 2004



Introduction

Doing Business in Belgium has been prepared for the exclusive use of BDO and its clients. Its aim is to provide background information for setting up and running a business in Belgium in compliance with legislation in force in February 2004. It is written in general terms and is not intended to be comprehensive. For more detailed information, advice should be sought from the BDO office with which you normally deal.

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Preface

Who should read this book?

Doing Business in Belgium is highly recommended to those who are thinking of establishing a business in Belgium, either as a separate entity or as a subsidiary of an existing overseas company, or anyone who is considering coming to work or live permanently in Belgium.

Scope

This guide describes the business environment, and the financial and legal implications of running, or working for, a Belgian branch or subsidiary of a company based outside Belgium. The most important issues are included, but it is not feasible to discuss every subject in detail within this format. If you would like to know more, BDO Belgium can provide you with information on any further issues.

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Preface

Who should read this guide?

Doing Business in Belgium should be read by anyone who is thinking of establishing a business in Belgium either as a separate entity or as a subsidiary of an existing foreign company, or anyone who is considering coming to work or live permanently in Belgium. It is also relevant to those reviewing their business in Belgium.

Scope

Doing Business in Belgium describes the business environment and the financial and legal implications of running, or working for, the Belgium branch or subsidiary of a company based outside Belgium. Most key issues are covered in this publication but it is outside its scope to deal with every aspect in detail. For more specific information, please contact the BDO Member Firm in Belgium, **BDO Belgium G.I.E.**

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1. The business environment

General information

Geography

The Kingdom of Belgium, covering an area of some 30,562sq km, borders the Netherlands to the north, France to the south, and Germany and Luxembourg to the east. On the west, its border is the North Sea, allowing excellent access to Great Britain. Belgium is split into two major regions, the Flemish and the Walloon. The whole nation is divided into 10 provinces.

History

The Kingdom of Belgium is a relatively new country by European standards since it was only founded in 1831. It can nevertheless look back on a very long history which was largely determined by the European balance of power.

The earliest historical events go back almost 2,000 years and indicate that the region which is now Belgium was invaded from the north by German tribes, whilst the southern part of the region was occupied by Latinised Celtic people. These two groups settled down and caused the establishment of a linguistic boundary and the foundation of the current multilingual situation in Belgium.

Throughout its early history and until the early 1800s, the Belgian region was governed by other nations, including Spain, Austria, France and the Netherlands. With the backing of the principal European powers, Belgium became a sovereign state in 1831.

Government and political powers

The Belgian constitution of 1831 founded a hereditary monarchy with a bicameral national parliament and a national government with strong central powers. However, the presence of two different linguistic and cultural groupings influenced the political evolution of the country in many ways in subsequent years.

In 1970, cultural autonomy was granted and four linguistic regions were established: Flanders, Wallonia, the bilingual region of Brussels, and a small German-speaking part in the east of the country.

In 1980, the principle of two linguistic communities (Dutch and French-speaking) and three regional entities (Flanders, Wallonia and Brussels) were defined in the constitution. The constitutional reform of 1988-1989 and of 1993 enlarged the competencies attributed to the communities and the regions, confirmed the autonomy of the Brussels region and defined its institutions.

Population and language

Belgium has a population of over 10 million people. The largest cities are the capital city of Brussels followed by Antwerp, Ghent, Liège and Charleroi.

There are three official languages: Dutch is spoken by the Flemish people in the region of Flanders (57.5% of Belgian population), French is spoken by the Walloons in Wallonia (41.5%) and German in a small area situated in the East of Belgium (1% of the population). The capital of Brussels is officially bilingual (Dutch/French).

Currency

The unit of currency has been the Euro (EUR) since 1 January 2002.

Inflation

Over the past few years inflation has been under strict governmental control, which kept it at a steady rate of between 1.5 and 2.5%. The annual rate of inflation in 2002 was 1.65% and in 2002 1.63%.

Time, weights and measures

Belgium is one hour ahead of Greenwich Mean Time. Like all other continental European countries, Belgium uses the metric system (gramme, metre, litre, centigrade).

Belgium and the European Union

Given its ideal location in the heart of Europe, Belgium and Brussels play an important role in the extension of the European common market. Long before the establishment of the European Community, Belgium had already developed privileged economic ties with the Netherlands and Luxembourg through Benelux. When the Treaty of Rome was signed in 1957, Belgium was one of the six initial signing members. Given its European importance, Belgium has many advantages for foreign investors:

- The quality of its labour force enjoys a world wide reputation. The productivity of its labour force is the second highest in the world (after Japan), as is its multi-lingualism (tri- and quadri-lingualism are common)
- Situated in the centre of a market of 320 million European consumers with excellent transportation links, it is not surprising that Belgium has become the home base of more than 1,000 major foreign investors
- Various international schools (British, American, French, Scandinavian, Japanese, German and Dutch)
- Various international institutions (NATO, etc.).

Business entities

There is no specific law governing or limiting the formation or purchase of a Belgian company by foreign investors, nor are there any rules requiring Belgian participation in the entity's capital or management, or limiting its right to acquire or construct industrial or commercial buildings.

Belgian company law recognises the commercial company in various forms. A foreign company wishing to engage in trade or manufacture in Belgium may decide to create a subsidiary or a branch. No prior authorisation is required except for specific types of business (eg. banking, insurance and transport).

Subsidiaries

A subsidiary set up as a Belgian company is required to comply with Belgian law whether or not the shareholders are foreign. Company directors may be all foreigners and live abroad. There is no legal requirement that a Belgian national should own part of the equity and there is no limitation on the repatriation of capital and profits.

Every corporation must file its articles of incorporation, the names of its directors, managers and statutory auditors, and its annual financial statements at the appropriate Court of Commerce.

The forms of corporation most widely used are:

- Public Limited Liability Company (S.A./N.V.)
- Private Limited Liability Company (BVBA./SPRL).

There are other forms of company such as co-operatives, one-man businesses, or general partnerships.

Public Limited Liability Company

Shareholders

There must be at least two shareholders who may be individuals or companies, residents or non-residents. The shareholders are liable only for the capital which they contribute.

Share capital

- The minimum share capital may not be less than EUR 61,500 EUR
- Each issued share must be at least 25% paid in upon incorporation, with at least EUR 61,500
- Shares may be in the form of bearer shares or issued to a named party
- Contribution in kind requires a report drafted by a company auditor and describing the contribution and the methods of evaluation used
- Increase in capital shall be decided by the general meeting of shareholders, or in some cases, by the board of directors.

Types / procedures of incorporation

Incorporation can be done by direct creation or by public subscription. In both cases a Belgian notary will be required and a financial plan must be submitted prior to incorporation. Founders can, under certain conditions, be held liable in case of bankruptcy within two years of incorporation.

Essential characteristics

- The shareholders' liability is limited to their contribution. The capital is represented by equivalent shares with or without nominal value. The shares, either with or without voting rights, can either be registered and entered in the share register of the company, or held by the bearer. The transfer of bearer shares can be made by simply handing over the share certificates. The transfer of registered shares is effected by entries made and signed in the share register. The transfer of shares can be restricted by the articles of incorporation
- A Shareholders' Meeting must be held at least once a year to approve the financial statements and to determine the distributable profit
- The annual accounts must be deposited with the Belgian National Bank within 30 days following their approval by the General Shareholders' Meeting. A statement concerning the balance sheet must also be published in the annexes of the Belgian Official Gazette (*Belgisch Staatsblad/Moniteur belge*)
- The duration of its legal existence is unlimited, unless otherwise specified in the articles of association or charter of incorporation.

Administration and external control

In principle all the powers of the company belong to the General Meeting of Shareholders. This body delegates power to the Board of Directors and appoints one or more statutory auditors. There must be at least three directors who are not subject to any residence or nationality requirements. The number of directors can, however, be limited to two in the case of two shareholders. The directors must not be appointed for a term exceeding six years. Daily management may be delegated to a committee or to a managing director.

The directors must prepare an annual inventory, annual accounts, including balance sheet and profit and loss account, and a management report. These documents are to be submitted to the General Meeting.

Accounting and auditing

The contents and presentation of annual financial statements are governed by the basic Accounting Law of 17 July 1975. For the sake of uniformity, Belgian Law has been adapted to the Fourth EC Directive by the Royal Decree of 12 September 1983.

The appointment by the General Meeting of statutory auditors is determined by the size of the company.

Profit distribution

Profits may, in principle, be fully distributed. However, 5% must be deducted from the profits and deposited into a legal reserve fund until the legal reserve amounts up to one-tenth of the share capital.

Private Limited Liability Company

A private limited company must have one or more shareholders, who may be individuals or companies. If a company becomes sole shareholder of a private limited company (SPRL), it will be held fully liable for the debts of the SPRL from the moment it has become the sole shareholder until there is a second shareholder or the company is dissolved.

The basic requirements for the formation are as follows:

- The minimum amount of capital required is EUR 18,550
- The capital must be fully subscribed. If part of the capital has not been subscribed, liability will pass to the founders who are then considered subscribers of the unsubscribed capital
- At least EUR 6,200 must be paid in. Shares representing contributions in kind must always be fully paid in. Shares in cash must be paid in up to at least 20%

Essential characteristics

- The private limited company is a company in which the shareholders' liability is limited to their contribution. Its capital is represented by equivalent shares.

All shares, whether with or without voting rights, are registered and are entered in the share register of the company. The shares can only be transferred by an entry in the company's share register. This transfer is normally subject to the shareholders' approval. An approval is not required when the shares are transferred to other shareholders, to their spouses or to their next of kin

- A shareholders' meeting must be held at least once a year to approve the financial statements and to determine the distributable profit. If there is only one shareholder, his decisions are to be registered at the seat of the company
- The annual accounts must be deposited with the Belgian National Bank within 30 days following their approval by the shareholders' general meeting. A statement concerning the balance sheet must also be published in the annexes of the Belgian Official Gazette (*Belgisch Staatsblad / Moniteur belge*)
- The duration of its legal existence is unlimited, unless otherwise specified in the articles of association or charter of incorporation.

Associations

Forms of associations can be general or limited. In general associations, all associates are jointly and severally liable for all debts and liabilities of the association. In a particular type of association, one or more of the partners (but not all) may limit their liability to the amount of their investment.

Association agreements need not be authenticated by a notary, nor are there any requirements for the publication of association agreements or financial statements.

Joint ventures

No preliminary authorisation is required. A separate chart of accounts for its operations must be kept and the joint venture must register with the VAT authorities. The profits or losses realised by a joint venture are dealt with in the taxable results of the participants and not by the joint venture itself.

Branches

A foreign company may freely set up a branch in Belgium. Branches are governed by the same regulations as Belgian companies as regards management and operations in Belgium. Foreign companies wishing to establish a Belgian branch must comply with the following formalities:

- File a certified true copy of the parent company's articles of incorporation with the Register of Commerce, a statement by the parent company's board authorising the establishment of the branch and the delegation of powers of the branch management, indicating the name and address of its official representative in Belgium
- Register at the Register of Commerce where the new branch will be located, obtain a registration number, and keep appropriate legal and accounting records
- Respect the 1975 Law on Financial Statements, which is applicable to branches

Restructuring

Mergers and take-overs

For mergers no preliminary authorisation is required. Procedure for take-over bids is handled by the Banking Commission and it is advisable to inform the Commission from the start of any such project, so that it may indicate the suitable procedure.

The Law of 2 March 1989 requires stock-quoted companies to inform the Banking Commission and the firm involved if they purchase 5 % or more of the firm's shares, or when they increase their shareholding by 5 % or more.

It is furthermore required that the Ministry of Finance and the National and Regional Economic Ministries should be informed in advance of any operation aimed at securing the transfer of a third or more of the capital of any firm operating on national territory whose equity amounts to at least 2,478,935.25 EUR.

Liquidation

The dissolution of a company may be decided at any time by a special meeting of the shareholders, deliberating in the form prescribed for amendments to the articles of association and held before a notary.

When, as a result of losses, the net worth of the company is reduced by an amount below half of the company's capital, the directors must submit to a General Meeting of Shareholders the question whether the company should carry on its activities.

In both cases the Board of Directors should make a special report supporting its proposals. The same rules apply when the net worth is (as a consequence of the losses) reduced below one quarter of the company's capital. In this case, the dissolution may be pronounced by shareholders owning one-quarter of the voting shares. In case the Board decides for dissolution of the company, a liquidator must be appointed to proceed with the realisation of all assets and liabilities.

The dissolution of a public limited company can also be pronounced by the Court of Commerce at the request of any interested party when the net worth is reduced below the minimum capital required by law.

Bankruptcy

A company (or individual trader) that has been forced to stop payments to its creditors will incur criminal penalties if this fact is not reported within one month to the Commercial Court, which may declare it bankrupt and subject to compulsory liquidation. Bankruptcy may also be declared based upon the legal suit of a creditor.

In the case of bankruptcy within three years after establishment, the founders could be held personally liable if the initial capital seemed insufficient. Where bankruptcy is declared, transactions made during a period of six months or more prior to the time of such a declaration are considered suspect, and such items as transfers without proper consideration and transfer of merchandise in payment for a debt may be declared void. The debtor may apply for the consideration of a “scheme of composition” with creditors, or for additional time to pay. Such a scheme could become effective if more than 50 % of the creditors are present and if approved by creditors representing more than 50 % of the value of the debts due. In certain circumstances, the scheme will only be binding to secured creditors in case of their explicit approval.

Labour relations and working conditions

Good labour relations are maintained in Belgium by a constant dialogue between employers and employees through different organisations. Such dialogue leads to collective agreements that are used as guidelines for agreements sector by sector or, more rarely, firm by firm.

Employee/employer relation legislation

Employee/employer relations are organised by legislation, while working conditions are set by contracts of employment. Social legislation is, in spite of the state reforms, still a national matter. Social negotiations, which have been institutionalised in Belgium since after World War II, are organised at different levels as follows:

National level

The National Labour Council is composed of an equal number of representatives from employees’ and employers’ confederations. The Council is a consultative body, reporting to Parliament. Results of discussions can lead to inter-professional work agreements which are valid at national level. These agreements can be enforced by Royal Decree.

Regional level

Some institutions have been created where the social partners of the region meet.

Industry level

Employers and employees are represented in parity committees that serve particular branches of industry. They determine the salary level and general conditions of employment in the sector for which they are responsible. Their most important task is to co-operate in drawing up collective labour agreements and to prevent or conciliate in industrial disputes.

Company level

Labour discussions take place between management and the union’s delegation.

Trade unions

Membership of a trade union is not compulsory in Belgium and consequently there are no “closed shops”. In spite of the relatively high percentage of working people being members of a union, Belgium knows a very calm social climate due to the fact that employers and employees very regularly meet at different levels, and social negotiations form part of the social structure.

The tasks of the trade unions are:

- Representation of the affiliated workers
- Furtherance of the occupational interests of their members
- Dealing with disputes in connection with the application of labour regulation and collective labour agreements.

Employers' organisations

The National Confederation of Belgian Industries (*Fédération des Entreprises de Belgique / Verbond van Belgische Ondernemingen-FEB/VBO*) represents some 50 industry-wide federations of employers. The Confederation represents the employers in several councils and organisations:

- The Flemish Economic Federation (*Vlaams Economisch Verbond - VEV*)
- The Wallonia Industrial Union (*Union Wallonne des Entreprises - UWE*)
- The Brussels Federation of Companies (*Union des Entreprises de Bruxelles / Verbond van Ondernemingen te Brussel - UEB/VOB*).

Employee participation at company level

Trade union delegations are not regulated by law but by collective labour agreement concluded within the National Labour Council. The delegation is not set up automatically. This has to be requested by one or more trade union organisations.

- Companies with 100 employees or more must set up workers' councils composed of union member-delegates, who are either elected or appointed. The Council functions as a consultative body in providing information and advice for its members, in accordance with the company's economic and financial position. The decision-making powers of the council are limited to the spheres of fixing annual holiday dates, the running of the company's social activities, and the framing and modification of regulations governing work
- Companies with 50 or more employees have to establish a Health and Safety Committee. The Committee's responsibilities relate to hygiene, safety and cleanliness in the workplace, and its activities in these areas are advisory.

Both the Workers' Council and the Health and Safety Committee are elected once every four years, nationwide.

Working conditions

Wages and salaries

Collective agreements fixing both guaranteed minimum monthly income and minimum wage levels are negotiated at the National Labour Council. The minimum monthly salary (2003) ranges from 1,186.31 EUR to 1,244.19 EUR (for employees subject to Labour Law Committee No 218), amounts which depend on the level of seniority, and which are linked to the movement of the cost of living index.

Fringe benefits

Some employers grant their employees additional or non-statutory fringe benefits. These benefits vary widely and are often laid down in the provisions of collective labour agreements. Some

examples are: luncheon vouchers, payment of a thirteenth month's salary, premiums for group insurance, etc.

Hours worked and flexible working hours

Companies, under certain conditions, implement work schedules that imply:

- Working on Sunday
- Working on the 10 annual public holidays
- Working at night (for men)
- Working up to 12 hours a day, provided that the average working week is observed over a period of 12 months.

These provisions make Belgium a pioneer country in Europe as far as flexibility of work organisation is concerned.

Paid vacation

The minimum annual holiday period totals 20 working days. In some cases, there may be a number of compensation days, according to a working hours regulation.

Termination of employment

Labour legislation makes a distinction between manual workers and white-collar workers, although many rules are the same for both. Employment contracts entered into for a fixed term or for a specific assignment expire automatically in the normal way when the agreed period has elapsed or when the agreed assignment is completed. Employment contracts can be terminated for the following reasons:

- Compelling reasons: dismissal on these grounds can take place at any time
- A contract concluded for an indefinite period of time may be terminated by both employer and employee by giving notice in writing, specifying the commencement and duration of the period of notice. Notice periods vary for manual workers and white-collar workers, and whether given by the employer or by the employee.

Termination for compelling reasons or without taking into account the period of notice can lead to compensation payments also, including benefits acquired by virtue of the contract.

The rules concerning the closing-down of an enterprise apply only to companies employing more than 20 persons during the calendar year prior to termination.

Pensions

Retirement age is 65 years for men and 63 for women (65 as of 1 January 2009). Men can retire early on full pension at the age of 60, provided that their employers recruit unemployed people to replace them.

Early retirement

Employees who are dismissed after the age of 58, and who have more than 25 years of service, are entitled to receive a monthly allowance from their last employer until their 65th birthday. This allowance must be paid on top of the unemployment benefit for which the dismissed person is eligible.

Retirement

The retirement pension equals 60 % (single persons) or 75 % (persons with dependents) of the average annual gross wages earned over the years, adjusted to offset inflation and multiplied by the number of years worked. The latter number is limited to 45 years for males and 43 years for females (till 2005). A minimum retirement pension for a 'full career' equals EUR 12,485.61/year (EUR 1,040.47 a month) for persons with dependents and EUR 9,991.63/year (EUR 832.64 a month) for single persons.

Social security

An elaborate and well-balanced social security system covers the risks linked with certain socio-economic factors. Social security payments are provided either to those who have or had a professional activity, or are extended to all members of the family. Eligibility for unemployment benefit, and sickness and invalidity benefit requires contributions to be paid by both the employer and employee. Family allowance, holiday pay and industrial accident and sickness benefit are paid by the employer. Payment of social security contributions is compulsory. Blue and white collar workers pay 13.07% of their salary, while employers pay in general 38.76% for their blue collar and 32.76% for their white collar employees.

Residence and work permits/professional cards

Foreign employees

A foreigner intending to stay in Belgium should apply to the Belgian Embassy in the area in which he resides and apply for a temporary residence permit (not applicable for tourists visiting the country for a maximum period of three months). On arrival in Belgium he will be provided with a certificate of registration which is valid for one year. The above does not apply to European Union residents, who can be registered on the production of a valid passport or identity card.

Work permits

Foreigners, other than a national of another member state of the European Union, must have a work permit issued in advance by the competent regional Minister for labour matters. When the work permit is granted, the holder must apply for a residence permit, which will be delivered by the Registrar's Office of the town where the foreigner plans to reside.

Professional cards

Generally speaking, any self-employed foreigner who is not a resident of the European Union is required to hold a valid professional card instead of a work permit. Application for the card must be made at the Belgian Consulate or Embassy covering the applicant's residential area in his own country. Exempt from the professional card requirements are certain trades or professions, and foreign executives and researchers employed by a coordination centre. Professional cards are issued for up to five years and are renewable.

Non-EU citizens who are (i) legal representative of the Belgian branch of a foreign company or (ii) are appointed as directors of a Belgian company and who come to Belgium need a Belgian professional card.

Finally, non EU citizens who hold a Belgian work permit to work in Belgium as an employee, will in addition need a professional card if they are appointed as legal representative of a foreign company (even if their position as legal representative is not remunerated).

2. Finance and investment

Regulatory agencies

Regulation of business

There is no general restriction in Belgium on foreigners doing business and establishing themselves in the country, and no prior authorisation or business permit *per se* is required for a foreign company or individual wishing to do business here. European Union (EU) nationals may, in general, establish, work and/or render services in Belgium, just as they may in any other member state. However non-EU nationals who come to work in Belgium must first obtain either a work permit or a professional card. Moreover, certain specific activities are regulated and subject to prior authorisation. Among the most important are banking, insurance, financial leasing, transport and road haulage, stock-brokering and commodities transactions, sales of meat and certain other food products, travel agencies, as well as certain professional activities (.g. those of lawyer, and certain categories of auditing).

In order to get an inscription in the Official Register ('Banque-Carrefour' in French/ 'Kruispuntbank' in Dutch), the company must obtain an attestation certifying that the person charged with daily management (director, manager, legal representative of the company) has the basic professional capability to be the daily representative of the company. The afore-mentioned professional capability can be proved by past professional experience or by submitting certain diplomas.

However, if the shareholder (company) qualifies as a big company, no attestation of management skills is required. A simple declaration will normally do.

The shareholder company qualifies as a big company if it fulfils one of the following conditions:

- The company has more than 50 employees/staff
- The annual turnover exceeds 7 million EUR
- The balance sheet total exceeds 5 million EUR

Stock exchange requirements

Belgium has traditionally pursued a very liberal policy in the field of exchange controls, and there are therefore no significant restrictions on capital or currency movements, either into or out of the country.

There are no restrictions on residents owning and operating bank accounts in Belgium. Foreign individuals and companies established in Belgium will be treated as residents for the purpose of exchange control regulations.

Price controls

A lot of products are subject to price control regulations, which include EU regulations and program agreements with business associations representing a specific industrial or trade sector.

Anti-trust and anti-competitive practices

The main objective of the law of 5 August 1991 on the protection of economic competition, modelled on the EU competition rules, is the protection and furtherance of effective competition between undertakings in Belgium in their respective markets, by prohibiting anti-competitive agreements and the abuse of dominant positions.

Consumer protection

Special regulations exist for some products, such as meat or pharmaceuticals.

Environmental protection

The construction of industrial and commercial buildings that may be dangerous or unhealthy is subject to prior authorisation. Authorisation is also required to drain effluent water, and for the disposal or transportation of waste.

Import and export controls

Most goods can be imported and exported without limitation. Licences are required in only a limited number of cases. In general goods imported must be paid for through the official currency market.

Patents, trademarks, copyrights and registered designs

Belgium adheres to several international treaties. Patents are valid for a period of twenty years, without a renewal period. Letters of patent may be obtained from the Department of Economic Affairs. No approval is required for patent licensing agreements but they must be registered to have effect. The grant of a patent requires a prior examination regarding its novelty, otherwise only a short-term patent of 6 years may be obtained.

Trademark regulations were substantially modified by the agreement concluded between Belgium, The Netherlands and Luxembourg, called "the Benelux Code". The exclusive right is obtained through application to the national office or to the Benelux Office of Trademarks in The Hague. The protection is obtained for a period of ten years, but such a period can be extended for further periods of ten years. The right to the trademark can end if there is no normal use made of the right by the trademark holder or licensee within three years following the granting of the trademark, or within a period of 5 consecutive years.

Designs and models are governed by the Uniform Benelux Law relating to designs and models. The protected right to designs and models is only granted for a new model or design of a product that has a useful function. The protection is obtained for a period of five years, which can be extended twice for a period of five years. The exclusive right to a design or model is obtained through application and registration in the Benelux territory at an office of the Benelux Office of Designs and Models.

Banking and local finance

Banking system

The banking system consists on the one hand of the bodies responsible for the regulation of the money markets and for the implementation of monetary policy, and on the other hand, of the basic financial institutions: deposit banks, public credit institutions and private saving banks. The basic legislation that governs the banking system is the Banking Act of 1935.

Although the authorities instituted under the legislation are not concentrated into a single organisation, there is a close co-operation - and prior consultation is even required by law - between the Minister of Finance, the Banking Commission, the National Bank of Belgium and, within the National Bank, the Belgium-Luxembourg Exchange Institute.

The National Bank implements the monetary policy, issues the Belgian currency, acts as state banker and intervenes as lender of last resort in credit operations.

The Banking Commission's role is to supervise the individual financial institutions: banks, mutual funds, finance companies, holding companies and saving banks. Furthermore it supervises new issues and public tenders of stocks, shares and other securities, in order to protect the potential investor from any misleading information.

Regulation of exchange operations is a constituent of the fiscal policy conducted by the National Bank. Since 1922, Belgium has been linked to the Grand Duchy of Luxembourg in an economic union, and for this reason, exchange control has been handled by a separate organisation and has been transferred to a body competent to handle exchange control for both countries. The Belgo-Luxembourg Exchange Institute is responsible for actions affecting the movement of capital across borders.

Financial institutions

It is important to specify the various financial institutions:

- Credit institutions are companies whose activities consist of receiving deposits and other refundable moneys from the public, to issue loans for their own account
- Financial establishments are companies whose main activity consists of taking up shares, or exercising one or more activities which result in mutual benefit.

Nevertheless, most of the large banks established in Belgium cover all the activities in the financial sector, either directly or indirectly.

Public credit institutions play an important role in the Belgian financial sector. It should be noted that State intervention in these organisations is tending to decrease in favour of partial privatisations.

Private institutions account for the largest part in the financial sector, both in number and in volumes. Basically, the private institutions and the largest banks in particular offer all the financial products and services required by Belgian and foreign clients.

Accounting and auditing requirements

Statutory requirements regarding books and records

Accounting principles, based on the EC Fourth Directive, are laid down in the law of 17 July 1975, the Royal Decree of 8 October 1976 and subsequent Royal Decrees.

Accounting requirements

All business are required to keep books and records complying with accounting principles, and to draw up financial statements including a balance sheet and a profit and loss account. Books, records and financial statements must be drawn up in the French, Dutch or German, depending on the region where the business is located, and expressed in Euro. The financial year of a company is normally twelve months. This period may be either extended or shortened, as frequently occurs during the first financial period. The closing date is determined by the articles of association.

Accounting records

Generally, the following books and records must be kept and retained for at least 10 years:

- Auxiliary books recording the daily operations (bank journal, purchase journal, sales journal)
- A legal journal in which the monthly movements of the auxiliary books are summarised
- An inventory book for the annual registration of the inventory of assets, liabilities, contingent assets, and commitments and contingent liabilities. This inventory is prepared and recorded following the layout of the chart of accounts of the enterprise.

Legal journals and inventory books must be kept in bound form, and must be registered with and stamped by the Commercial Court before the first entry is made. Any entries made in the books must also be recorded in the ledger accounts. Companies must also use the Belgian Minimum Chart of Accounts.

Contents and form of financial statements

Financial statements must be prepared in a predetermined format, which is in line with the EC Fourth directive. The financial statements that must be filed are the following:

- Balance sheet after profit appropriation
- Profit and loss statement
- Explanatory notes.

The annual general meeting to approve the accounts should be held within six months of the close of the financial year. Within one month of the date of the annual General Meeting, the approved financial statements must be deposited with the National Bank of Belgium, which forwards a copy to the Court of Commerce and to any other interested party.

The balance sheet

The balance sheet includes, on the asset side, a summary of:

- Fixed assets
- Stock
- Receivables
- Cash in hand/bank
- Other assets.

On the liability side, there is a summary of:

- Shareholders' equity
- Provisions for risks and charges
- Borrowings
- Payables and other liabilities.

The information must be given in the same terms for both the most recent and preceding years.

The profit and loss statement

The profit and loss statement should be fully detailed as set out in Exhibit 2 of the Royal Decree of 8 October 1976. The main headings are as follows:

- Operating revenue
- Operating costs and expenses
- Financial results
- Extraordinary results
- Income taxes
- Profit appropriation.

Valuation

The board of directors principally determines the valuation principles to be used. In Belgium, companies are allowed to prepare only one set of annual accounts for both commercial and taxation purposes. Therefore, the accounting rules included in the tax legislation have tended to become standard practice. Consequently, conservative valuation principles prevail and companies adopt the historical cost convention.

Certain fixed assets may be revaluated to market values. Any surplus must be transferred to a separate non-distributable reserve. Valuation principles must be consistently applied. Changes must be explained and justified in the notes to the financial statements.

Consolidated financial statements

Consolidated accounts were introduced in Belgium by the Royal Decree of 6 March 1990, which is based on the EC Seventh Directive. All commercial enterprises in Belgium are subject to this Royal Decree if they have one or more subsidiaries.

An enterprise may be exempt from preparing consolidated accounts if the enterprise itself is a subsidiary of a parent company that prepares and publishes audited consolidated accounts and a consolidated directors' report.

An enterprise is also exempt from the obligation to prepare consolidated accounts if the enterprise and its subsidiaries do not, on a consolidated basis, exceed more than one of the following limits:

- Turnover, excluding VAT, of EUR 12,500,000
- Balance sheet total of EUR 25,000,000
- Average number of 250 employees during the year.

The exemptions referred to above do not apply where all or part of the shares issued by one of the enterprises to be consolidated have been admitted to an official listing on a stock exchange established in a member state of the European Union.

The consolidated accounts must be audited by the statutory auditor of the consolidating enterprise, or by one or more auditors appointed by the general meeting of the enterprise.

The consolidated accounts and reports must be made available to the shareholders of the consolidating enterprise, submitted to the general meeting and published under the same conditions and within the same time limits as the annual accounts.

Audit requirements

Enterprises meeting more than one of the following three criteria must appoint one or more statutory auditors (*commissaires*) for a renewable period of three years:

- An average of 50 employees during the year
- An annual turnover, excluding value-added tax, of EUR 6,250,000
- A balance sheet total of EUR 3,125,000

Enterprises in which the average number of employees during the period exceeds 100, or if the company concerned is part of a company group that is obliged to issue consolidated accounts and exceeds the aforementioned criteria on a consolidated basis, one or more statutory auditors must be appointed. These conditions apply to the individual company or to the group to which it belongs.

A statutory auditor has an unlimited right of oversight and inspection of all the operations of the company and must report to the shareholders on the annual accounts of the company and on the board of directors' report.

The statutory auditor's report must be made available to the shareholders at least 15 days before the annual shareholders' meeting. A copy of the report must be filed with the company's tax return and must be made available to the public as an exhibit with the annual accounts.

The statutory auditor must also report specifically to the works council. This reporting involves giving an opinion on the statutory annual accounts and certifying the economic and financial information given to the council.

All statutory auditors must be selected from the list of members of the Institute of Chartered Accountants (*Institut des Reviseurs d'Entreprises /Instituut der Bedrijfsrevisoren*). The *Institut des Reviseurs d'Entreprises* has issued auditing standards to be followed by all its members. Although not as numerous these auditing standards are similar to the standards applied in the other northern European countries.

The *Institut* requires its members to make an assessment of the adequacy of internal control procedures, and comment in their opinion on the extent to which they have relied on an administrative organisation that includes a system of internal control appropriate to the nature and the extent of the enterprise's activities.

Exchange and investment controls

In practice, freedom of exchange exists for all purposes. There are no restrictions on foreign ownership and no registration requirements for capital, loans, technology agreements, and the like. All foreign investments, including earnings, can be freely repatriated. There are also no restrictions of foreign business investments or ownership in Belgium.

Investment incentives

Both tax and non-tax incentives are available to encourage investment.

Non-tax incentives

Interest rebates

Interest rebates may be given on investment loans granted by some financial institutions.

Capital grants

Under certain conditions, the interest subsidy may be totally or partially replaced by a non-refundable capital grant.

State guarantee

The Belgian Government may guarantee the reimbursement of the investment loans.

Investment companies

National and regional investment companies may participate in corporations.

General tax incentives

Real estate tax and capital duty exemptions, special depreciation deductions

As a complement to an interest subsidy or a capital grant, the Regions may, under certain conditions, grant exemptions from real estate tax, capital duty and offer the possibility of applying for double depreciation deductions.

Depreciation

A double depreciation rate on declining balance may be applied on most depreciable fixed assets. Also accelerated depreciation is available under law or administrative rulings (see Chapter 3. The tax system - Depreciation). Most accessory costs with respect to fixed assets may be depreciated wholly during the year of acquisition.

Investment deduction

Small and medium-sized companies may claim an investment deduction amounting to a certain percentage of the invested fixed assets. Furthermore scientific research and energy-saving investments, made by small-, medium- or large-sized companies, qualify for an increased investment deduction.

Capital gains exemption

Most capital gains on shares are exempted from tax. Under certain conditions, capital gains on tangible and intangible assets are subject to a regime of deferred taxation.

Losses

Tax losses are carried forward without limits.

Holding companies

Belgium has a favourable system regarding the taxation of holding companies:

- 95% exemption of dividends received
- Full exemption of capital gains on shares
- Interest charges are deductible
- Withholding tax on dividend distribution is considerably reduced in accordance with the EC Directive and numerous tax treaties.

Employment deduction

Companies may deduct EUR 11,990.00 per year for each new researcher. The deduction is also granted for the head of the quality control department and the export department. For highly skilled researchers employed in a research centre, the deduction amounts to EUR 23,980.00 per year.

Tax credit

Under certain conditions, a tax credit is granted to companies amounting to 7.5 % of their capital increase with a maximum of EUR 20,000.

Coordination centres

Belgian subsidiaries or Belgian branch offices of foreign companies being part of an international group can qualify as a Belgian coordination centre. A coordination centre can be established by a multinational group if it fulfils the following requirements:

- The group is a set of directly or indirectly affiliated companies which are ultimately placed under the same control
- The group has a multinational character. A group has a multinational character if the following three requirements are met:
 - the consolidated capital of the group outside Belgium is at least EUR 12,000,000.00 or at least 20% of the consolidated capital of the entire group
 - the group's turnover outside Belgium is at least EUR 120,000,000.00 or at least 20% of its total turnover
 - the group owns subsidiaries in at least four different countries.
- The group has a consolidated capital of at least EUR 24,000,000 and a consolidated turnover of at least EUR 240,000,000.

A coordination centre may only perform certain auxiliary or preparatory activities for the benefit of the members of such a group. These may include advertising, insurance, centralisation of financial transactions, a.s.o.. Banking activities are explicitly excluded. However, groups that include banks, insurance companies and other financial institutions can establish a coordination centre, provided such financial institutions are excluded from the group for which the coordination centre renders its services.

The coordination centre must employ at least 10 persons in Belgium within two years of having started up and may not act as a holding company.

For coordination centres, the taxable amount is determined as a lump sum and not as their actual realised income. The taxable amount is determined as a certain percentage of the expenses and operating costs borne by the coordination centre (excluding personnel costs and financial expenses) and may not be lower than the total sum of the disallowed expenses and the abnormal or gratuitous advantages granted to the coordination centre. The thus determined taxable income is subject to the normal rate of corporate income tax or to the rate that applies to branches of foreign companies.

Furthermore, coordination centres are subject to a special annual tax of EUR 10,000.00 per full-time employee, with a maximum of EUR 100,000.00.

Coordination centres are exempt from the withholding tax on immovable property, from registration duties on contribution to capital and from withholding tax on dividends, interests and royalties.

Coordination centres may benefit from incentives for ten years only. However, existing centres are allowed to apply for a renewal of their status.

We may conclude that the coordination regime is interesting for intra-group activities with high personnel costs and financial expenses, since these expenses are excluded from the taxable cost plus basis.

Distribution centres

A distribution centre can be set up as a subsidiary or as a branch of a foreign company. These distribution centres, however, may only perform a specific and limited range of activities to group companies only, such as the purchase of raw materials or supplies, their transport and delivery, and the storage and administration of the former, as well as of the end products.

Activities relating to the transportation of products or their sale to third parties are not allowed. The term "group" is more restricted than in the coordination centre regulation. Generally, a 50% participation is necessary.

The advantage of the regime is that under certain conditions the distribution centre is not considered to have granted abnormal or gratuitous advantages to related companies if its turnover is not lower than the sum of the following elements:

- The purchase price of the goods that have been sold during the taxable period
- The cost of services supplied by third persons to the centre, on the condition that the supply of services is connected to the authorised activities of the centre and the cost of the service includes a normal profit margin
- 105% of the other working costs of the centre, excluding:
 - the costs mentioned above
 - non-deductible Belgian taxes
 - non-deductible expenses.

Taxable profits of such distribution centres are limited to 5 % of the operating expenses. The main advantage is that non-Belgian corporations can administer their foreign sales in Belgium without having to recognise the full profit on such sales.

The distribution centre will have to apply for a ruling to obtain the special regime. Once a favourable decision has been obtained, there are no set time limits as to the application, although the tax authorities may revoke the ruling at any time, notably if the centre exceeds its authorised activities.

Service centres

A service centre may be set up anywhere in Belgium and may be organised as a Belgian company or as a branch of a non-resident company. The service centre must be part of a group. A 50% participation is generally required, but there is no minimum employment requirement. Permission must be obtained to set up a service centre. It is granted for a renewable five-year period.

A service centre may not bear any commercial risk and may only render services that are to the sole benefit of group members. A service centre may perform the following four types of activity:

- Activities of a preparatory or auxiliary nature (professional training for a group, management of operational communication within or outside a group, research activities if they have a preparatory or auxiliary nature)
- Provision of information to customers, such as software help desks and information on goods sold or services rendered by group members
- Passive sales support: the service centre must act in the name of and for the account of group members and may not bear any commercial risk

- Active participation in sales operation: a service centre may act as a broker, ie. operate under its own name, but for the account of group members, and may accept orders for which conditions have been fixed in advance. Activities that aim to increase the turnover of group companies, such as direct sales or client solicitation, are not allowed.

A service centre is deemed not to have granted abnormal or gratuitous advantages if its turnover reaches a certain level, which is computed on a cost-plus basis for activities 1. to 3., and on a resale-minus basis for 4.

Under the cost-plus method, prices are deemed to be at arm's length if the turnover is not lower than the operational expenses increased by 5 % to 15 %, depending on the type of activity. Personnel costs and expenses of a disbursement character may, however, be invoiced without a profit mark-up.

Under the resale-minus method, prices charged by a service centre are deemed to be at arm's length if they are:

- Equal to at least a certain percentage of the turnover realised by group members through the participation of the service centre. The percentage is determined by the tax authorities taking into account the activity of the service centre and the risk borne by it, but the percentage may not exceed 5%
- Not lower than the operational expenses.

Foreign sales corporations (FSCs)

US companies considering the establishment of a Foreign Sales Corporation (FSC) in Belgium may request from the Belgian Tax Authorities a private ruling determining their Belgian taxable profits as a fixed percentage (8 %) of certain costs.

The cost basis consists of the costs for processing orders, organising deliveries, preparing and mailing of invoices, and collecting payments. Direct costs related to advertising and sales promotion, the transportation of goods, and the assumption of credit risks are not included in the cost basis to which the 8 % applies.

If an FSC is set up as a Belgian company, subject to the Belgian corporate income tax, the general principle is that the taxable profits may not be lower than the profits that result - after the necessary fiscal corrections - from the accounting records.

The private rulings are valid only if the eligible company proves yearly that it is recognised by the US tax authorities as an FSC. The rulings are automatically abolished if any change occurs in the FSC legislation or its application. The private rulings are valid for a three-year period and are automatically renewed, unless they are terminated during the last six months of this three-year period.

Expatriates

From 1983 on, a special regulation has been introduced for foreign executives and researchers employed on a temporary basis in a Belgian permanent establishment of a non-resident company, a subsidiary of a non-resident company or in any resident company that is part of an international group.

For Belgian tax purposes, the foreign employees have the status of non-resident taxpayers mainly because they maintain the centre of their economic interests outside Belgium. This will, however, have to be demonstrated to the Belgian tax authorities.

As non-residents, the foreign-source income is exempt from tax in Belgium. Furthermore, certain expenses borne by the employer (moving costs, housing allowance, costs of a yearly trip to home country, tax equalisation, cost of living allowance, etc.) are considered as expenses proper to the employer and are, within certain limits (EUR 11,250.00 for executives working in productive enterprises and EUR 29,500.00 for executives working in coordination or in research centres), exempt from tax for the employee. The expatriate status must be specifically granted by the tax authorities. No maximum period applies, but the expatriate status may be terminated (no claw back), if the facts indicate that the taxpayer is no longer in Belgium on a temporary basis.

3. The tax system

The tax structure

Taxing authorities

Taxes are levied by the federal government, the three regions, the provinces and the communes. Federal taxes are codified in the Income Tax Code, Registration and Inheritance Tax Code, VAT Code, Code of Taxes assimilated to Stamp Duties, and Customs and Excise Duty Code.

Principal taxes

Direct taxes:

- Corporate income tax
- Individual income tax.

Indirect taxes:

- Value added tax (VAT)
- Registration duties
- Inheritance and gift taxes
- Customs and excise duty.

Miscellaneous taxes:

- Stamp duty.

Corporate tax structure

For corporations no distinction is made according to the nature of the income. All kinds of income earned are considered as business income and taxed in that way.

Income tax structure

There are four categories of income which have to be distinguished:

- Earned income
- Income from movable property
- Income from immovable property
- Miscellaneous income.

International aspects

Non-residents (corporations or individuals) are subject to Belgian tax on the income derived from Belgian source. Belgian double tax treaties generally provide that the foreign entity subject to tax in Belgium benefits from a tax credit or tax exemption in his country of residence, thus avoiding double taxation.

Administration

Corporate taxpayers

Advance payments

In order to avoid a surcharge for insufficient prepayment, four advance payments need to be made on or before April 10, July 10, October 10 and December 20 respectively. Each of these advance payments amounts to 25 % of the estimated liability for profits of the current accounting period.

Tax return and assessment

The deadline is the earlier of the end of the accounting period (company's financial year) plus six months, and approval of financial statements by the general meeting of shareholders plus one month.

Penalties

Interest on overdue tax charged by assessment amounts to 7% per year. Fines will apply for late filing or payment.

Tax audit

The Belgian tax authorities may ask questions and request information from the taxpayer and from third parties, until December 31 of the third year following the financial year concerned (or fifth year in case of fraud). Within that same period, tax authorities are empowered, after giving thirty days formal notice, to modify the reported income.

Appeal procedure

In the case of an additional tax assessment, the taxpayer can file an administrative appeal within 3 months as from the date on which the assessment notice has been sent. In cases where the Belgian tax authorities have not allowed this administrative appeal, the corporation can file an appeal before the court of first instance, within 3 months as from the decision of the competent director.

Individual taxpayers

Filing

Each year, the individual Belgian resident or non-resident has to file a tax return to report the income received during the previous calendar year. These returns provide the information which the authorities use to raise assessments.

Advance payments

In order to reduce tax charged by assessment, individuals can make advance payments.

Withholding tax

Tax on employment income from Belgian sources paid in Belgium is collected by deduction at source.

Penalties, Tax audit, Appeal procedure

See: Corporate taxpayers.

Corporate tax system

Taxable entities

Corporate tax is payable by companies, associations, partnerships, co-operative societies, establishments and organisations which are engaged in profit-making activities or in the operation of a business. Only entities with legal personality are subject to corporate income tax.

Territoriality

A legal entity is a resident of Belgium if it has its registered office, main establishment or place of management in Belgium.

Gross income

Accounting period

The tax accounting period refers to the financial accounting period.

Accounting methods and business profits

The company's profits are determined in accordance with generally accepted accounting principles (GAAP).

The bookkeeping result is, however, adjusted for tax purposes. Non-allowable expenses or excess depreciation are added back, while some other items are deducted.

Inventory valuation

Belgian tax law does not contain specific provisions regarding methods of valuation of stock. Therefore, the rules of accounting law apply for tax purposes. According to accounting law, stock must be valued at cost or replacement value, whichever is lower. As to the methods of valuation, the FIFO and LIFO methods, the unit method and the average weighted price method are allowed. The base-stock method is not allowed.

Capital gains/losses

Capital gains realised on the disposal of business assets are regarded as business income and, therefore, normally subject to taxation at the ordinary rates. However, non-realised capital gains, and capital gains on shares or participations that qualify for the participation exemption, are exempt.

Tax on some other capital gains is deferred. Capital gains realised on fixed assets which are held for business purposes for more than 5 years prior to the disposal and gains realised in respect of damages, expropriations or similar events, may be subject to corporate income tax over the period of depreciation of the reinvested assets if the gain is reinvested adequately in depreciable non-financial fixed assets within 3 years (or 5 years for buildings, ships and aircraft).

Capital losses are normally tax deductible, except for capital losses on shares or participations. Capital losses on shares or participations are non-deductible, unless the capital loss would have been derived by a liquidation. In this case, the amount of loss of paid-in capital can be deducted.

Deductions

Business expenses

To be deductible, business expenses must meet the following conditions:

- They must be incurred or borne by the taxpayer during the accounting year
- The expenses must be made with the intent of obtaining business income
- Their amount and authenticity must be proved.

Deductible expenses

The most important deductible expenses are:

- Salaries, bonuses and fringe benefits
- Social security payments
- Travel, repair, maintenance, publicity, insurance
- Car expenses (deduction of most car related costs is limited to 75 %)
- Expenses for public relations and representation (deduction limited to 50 %)
- Rental expenses
- Research and development expenses
- Various taxes, such as registration and property tax, and customs duties.

Non-deductible expenses

All business-related expenses are deductible. The following expenses, however, are not deductible:

- Personal expenses
- Corporate tax
- Penalties
- Interest and gifts exceeding certain limits
- Excess depreciation
- Excessive profit transfers to foreign related parties.

Gifts

Gifts are deductible if they are made to certain organisations and if their value does not exceed the amount of 500,000.00 EUR nor 5 % of the taxable basis.

Royalties and management fees

Royalties and management fees are generally deductible.

Interest

Interest is only deductible to the extent that it does not exceed the market rate. Interest paid to directors and shareholders may in some circumstances be considered as dividends. Interest paid to foreign recipients that are subject to a favourable tax regime constitute a non-deductible expense to the extent that a 7/1 debt:equity ratio is exceeded.

Dividends

Dividends distributed by a Belgian company are part of the taxable basis.

Depreciation

Depreciation of business assets is calculated on the basis of cost price and the useful life of the assets. It is allowed as of the financial year in which the assets were acquired or produced, and must be taken every year. Delayed depreciation is not allowed.

The law provides for two methods of depreciation: the straight-line method and the declining-balance method. Straight-line depreciation is the normal method. Depreciation periods and rates are normally fixed by agreement between the taxpayer and the tax authorities, although for certain assets rates are set by administrative rulings (e.g. commercial buildings 3 %; industrial buildings 5 %; machinery and equipment 10 % or 33 %, depending on the type; and rolling stock 20 %).

Declining-balance depreciation is generally optional. However, most intangible fixed assets, cars and fixed assets that are depreciated by the owner but whose right to use has been transferred, must be depreciated on a straight-line basis. If in a given year the amount of depreciation computed by applying the declining-balance method is lower than that computed according to the straight-line method, a company may decide to apply the amount of depreciation computed according to the straight-line method as of that year.

Accelerated depreciation is available under law or administrative rulings. Qualifying assets include:

- Newly launched sea ships (depreciation in 8 years: 20 % in the 1st year, 15 % in the following 2 years and 10 % in the remaining years) and other ships (10 % per year)
- Plant and machinery, with the exception of buildings, used for scientific research (depreciation in 3 years, i.e. 33.33 % per year)
- Qualifying new assets acquired by companies in economic sectors of major importance to the Belgian economy (depreciation in 3 years, i.e. 33.3 % per year)
- Costs related to the acquisition of a depreciable asset (immediate depreciation, or at a rate fixed by the taxpayer)
- Costs of establishment, including costs related to the creation of a company (immediate depreciation).

Provisions

Under certain conditions prescribed in law or administrative rulings, the following tax free provisions can be created:

- Provision for bad debts. A tax-free provision for probable losses on debt claims may be created if certain requirements are satisfied, including a clear description of the losses and their deductibility as business losses when actually incurred. The risk of losses must be justified by special circumstances that have occurred during the tax year. The provision remains tax-free as long as the taxpayer can show the likelihood of the losses
- Provisions for probable charges. A tax-free provision for specific charges which the taxpayer expects to arise may be created, without limits, if certain conditions are met. The conditions include the eventual deductibility of the charge as business expense, and the recording of the claim as a liability on a separate account. The provision remains tax free as long as the taxpayer can show the likelihood of the charges.

Losses

Carry-forward of losses is unlimited in time. Losses may not be carried forward if there is a change in ownership that cannot be justified by financial and economic reasons. Carry-back of losses is not allowed.

Special rules limit the deduction of losses where the company is involved in certain tax-exempt reorganisations, such as mergers and splits. If profits are shifted to a related company, losses are not deductible from these profits.

Rates of tax

The basic rate is 33 %, increased to 33,99 % by a 3 % austerity surcharge. The following reduced rates apply to companies with taxable income less than 322,500 EUR:

<i>Income</i>	<i>Rate</i>
<i>(including 3 % austerity surcharge)</i>	
up to 25,000 EUR	24,98 %
25,001 EUR – 90,000 EUR	31,93 %
90,001 EUR – 322,500 EUR	35,54 %

The reduced rates are not applicable to:

- Companies owning participations exceeding certain limits (“financial companies”)
- Companies whose shares are at least 50% owned by one or more companies
- Companies whose dividend distribution exceeds 13% of the paid-up capital at the beginning of the financial year
- Companies which do not pay a minimum earned income to at least one of the directors
- Companies that are members of a group of companies which includes a coordination centre.

Special measures for small and middle-sized companies (SMEs)

These companies are exempt from any increase of taxes due to lack of (sufficient) advance tax payments during their first three taxable assessment years.

In addition, as from tax year 2004, SMEs can exempt part of their profits from tax by setting up an investment reserve. For the purpose of this provision companies are tax wise considered as SMEs if they are subject to the lower rate of tax.

The basic amount for setting up this tax-exempt reserve is the increase in the taxable profit placed in the reserves, including underestimated assets and overestimated liabilities, but before increase of reserves at the beginning of the financial year. The following sums must then be deducted from this basic amount: the exempt capital gains on shares and cars, any reductions in the paid-up capital and increases in debts to the company owed by shareholders, directors or business managers.

Half of the sum thus calculated can be set up as an investment reserve up to a maximum of EUR 18,750 per taxable period.

The exemption from tax is definitive subject to a number of conditions and restrictions (inviolability condition, compulsory investment in redeemable fixed assets whether tangible or intangible, which give a right to the deduction for investment). This measure is intended to encourage self-financing of SMEs. Nevertheless, these companies cannot deduct prior losses, losses during the taxable period, exempt gifts, deductions for investment, dividend received deduction (DRD) or income from exempt movable assets (RME) from part of the profits arising from the non-fulfilment of the conditions in relation to the investment reserve.

The tax wise accepted method for calculating depreciation of assets has been changed for financial years ending as from 31 December 2003 onwards. These new rules imply that the depreciation in the year of acquisition will tax wise only be accepted as a professional expense pro rata, based on

the number of days from the day of purchase until the end of the financial year. This type of pro rata depreciation calculation does not, however, apply in the year of the asset's disposal. This means that when calculating the (fiscal) capital gains on the asset only the depreciation (fiscally) assumed in the financial year prior to the financial year it is disposed of is taken into account.

Group of companies

Group treatment

There are no general provisions in Belgian law regarding group taxation.

Inter-company dividends (Participation exemption)

Dividends received from a participation in a resident or non-resident company that is subject to tax are 95% exempt from corporate income tax.

To be entitled to the exemption, the following conditions should be met:

- A condition of minimum participation in the share capital of the dividends distributing company of 10% or having the minimum investment of EUR 1,200,000.00
- A permanency condition (holding in full ownership during an uninterrupted period of at least one year)
- A minimum taxation requirement (of 15%) on the level of the dividends distributing company, by virtue of which the income, arising from companies established in countries where the provisions of common tax law are notably more beneficial than in Belgium, will be excluded.

In order to benefit from the participation exemption regime, the dividends should relate to shares of a financial fixed assets type. Shares that are booked as a cash deposit do not qualify for the participation exemption.

Merger

Belgian law provides a favourable tax regime for mergers. The regime applies to actual mergers as well as to split-ups and partial mergers. Companies are exempt from corporate income tax if the merger was carried out according to company law and if it had legitimate financial and economic purposes. Otherwise it is treated as a liquidation. All items of the 'absorbed' company are transferred to the 'absorbing' company as if no transfer had taken place. Losses of the absorbing and the absorbed company are carried over, in proportion to the net tax value of the loss-making company, compared with the total net tax value of both companies.

Liquidation bonus

A 10 % withholding tax is levied on income (dividends) allocated in the event of repurchasing of own shares or in the event of a total or partial division of the company assets.

Taxation of foreign companies

Trading through a branch office

Non-resident entities, with or without legal personality, which have a form comparable to the above-mentioned Belgian entities, are subject to income tax on non-residents, with respect to income derived through a permanent establishment in Belgium and income from immovable

property in Belgium. However, double tax treaties usually contain specific provisions concerning the taxation of foreign companies that define more precisely the scope of taxation.

The computation of the taxable base for non-resident income tax is subject to the same rules that apply for resident companies.

If no conclusive elements are available to determine the taxable base, the branch could be taxed notionally, based on an agreement with the fiscal authorities.

It is our experience that in that case a cost+10% regulation is often applied. Indeed, if the branch does no invoicing, the taxable base will be established at 10 % of the total amount of costs and expenses, including all salary of persons working for the branch. The tax rate for non-resident companies is also the same as that for resident companies.

Belgian subsidiaries

Belgian subsidiaries of foreign companies are subject to corporate tax in the same way as Belgian companies.

Taxation of foreign operations

Profits of a foreign subsidiary are not taxable in Belgium. Income from foreign *situs* immovable property and foreign branch profit are taxable in Belgium. Foreign branch tax losses are deductible from Belgian taxable profits.

Net profits (after foreign tax) by way of foreign dividends, interests and royalties are subject to Belgian corporate tax, but foreign-source dividends are exempt under the same principle as Belgian source dividends, and for interests and royalties a tax credit is granted.

If profits are derived from a country that has signed a double tax treaty with Belgium, foreign withholding tax rates are usually reduced, and income from foreign *situs* immovable property and foreign branch profit is exempt in Belgium.

Partnerships and joint ventures

The taxable income of a partnership or joint venture is determined according to the nature of the activity and is taxable under personal or corporate tax, depending on whether the partner that is deemed to have received its part of the income of the partnership is an individual or a company.

Value added tax

General Value-added tax (VAT) was introduced in Belgium on 1 January 1971.

VAT applies to:

- The supply of goods and services made by a taxable person
- The intra-Community acquisitions by a taxable person
- The import of goods by anyone.

A taxable person is any person (individual or legal entity) who supplies, within the framework of an economic activity, regularly and independently, goods and services listed in the VAT Code. Whether the transactions are carried out on a principal or on an accessory basis, with or without a profit motive, is irrelevant.

The taxable base is the consideration for supplies and services rendered, or the value of the imported goods. In computing the final tax liability, the tax paid on the purchases of goods and services may be deducted so that, in fact, only the value added is taxed. There are special regimes for small enterprises and agricultural enterprises.

Exemptions

Export and “deemed” export transactions, i.e. supplies to persons affecting a taxable intra-Community acquisition, are exempt, but do not result in the loss of deduction for input VAT.

The main exemptions, not giving rise to any deduction for input VAT, are:

- Services of attorneys, notaries and medical practitioners
- Education
- Insurance
- Most financial operations
- The supply of immovable property not qualifying as a new building.

Input tax deduction

The amount of VAT due is reduced by a credit for input VAT on goods and services supplied to the taxpayer and on imports. The right to deduct input tax is subject to the possession of invoices showing the tax paid.

VAT incurred on certain expenses is not deductible. These include:

- Tobacco products
- Most hotel and restaurant expenses
- Entertainment expenses
- Car expenses (maximum 50% deduction).

Tax rates

General rate	21%
Intermediate rate for a number of listed products	12%
Reduced rate for certain basic goods and services, including food, water, pharmaceutical products, books and periodicals, agricultural services, passenger transport, hotel accommodation, renovation or maintenance work on buildings that are at least 15 years old (+ temporary (till end of 2005) also for 5 year old buildings)	6%
Gold used for investment	1%

Tax invoices

Invoices must include the following information:

- Date and number of invoice
- Name, address and official registration number of the taxpayer
- Name and address of other contracting party
- Date of supply of the goods or services
- All data required for determining the applicable rate, including description and quantity
- Taxable amount
- Rate and amount of tax
- Reason for exemption.

Territoriality

Goods sold within Belgium are subject to Belgian VAT. Goods imported into Belgium or transported from within the European Union are also subject to Belgian VAT. Goods exported outside the European Union or transported into the European Union are normally not subject to VAT in Belgium.

Services are in general subject to Belgian VAT when the supplier is established in Belgium. However, there are many exceptions concerning such items as immovable property, transportation services and intangible services.

Reporting

Each person or company subject to Belgian VAT must obtain a Belgian VAT registration number. Further to the European directive of 17 October 2000 regarding the determination of the person liable for payment of VAT, Member States may not require anymore VAT payers established within the European Union to appoint a VAT representative. As of 1 January 2002, VAT payers with a fixed establishment in the European Union, who need to be identified in Belgium for VAT purposes may chose between a direct identification and an identification via the appointment of a VAT representative (under an individual VAT number). In addition, the aforementioned Directive also resulted in a change in Belgian law with respect to the liability to pay the local VAT due for local supplies of goods and services, when performed by a non-resident taxable person (EU or non-EU): if the Belgian client files Belgian VAT on a periodical basis, a reverse charge makes the Belgian client liable to settle the VAT.

Prior to the 20th of each month, a VAT-return must be filed reporting the operations carried out during the preceding month. Smaller VAT-payers may file a quarterly return. In addition, an annual listing has to be filed in the first quarter of each year, reporting for each customer who is liable for VAT, the sales amount in the preceding year and the related VAT charged. Finally, quarterly listings have to be filed for certain transactions with customers located in other EC countries.

Taxation of individuals

Territoriality and residence

Resident individuals are subject to individual income tax on their world wide net income. Non-resident individuals are subject to the tax on non-residents with respect to their Belgian-source income.

There is no net wealth tax in Belgium. Inheritances and gifts are subject to the inheritance and gift taxes.

Resident individuals are those who have their abode or centre of economic interests in Belgium. An individual is presumed to be a resident of Belgium when he is registered in the civil register. Married persons are deemed to be residents at the place where the household is established.

Income tax

The taxable income of an individual taxpayer is the sum of the net income of each category.

Categories of income:

- Income from immovable property
- Income from movable property, including dividends, interests and royalties
- Earned income, including business profits, professional income, employment income and pension income
- Miscellaneous income.

The net result of each category is gross income less expenses incurred in acquiring or preserving the pertinent income, and is computed according to each category's own rules. Certain deductions may be allowable from this total net income before applying the progressive tax rates.

Spouses file jointly but are taxed separately on their earned income. Other items of income are aggregated and the spouse who earns the most is taxed on this income.

Income from immovable property

Only some rental income is taxable, with a 40% lump-sum deduction. Capital gains on real estate realised by individuals are, in principle, not taxable.

Income from movable property

Dividends, interests and royalties are taxed separately at a flat rate of 15% or 25% (10% on liquidation bonus). Interest income from certain savings deposits is exempt from income tax and withholding tax up to EUR 1,500,00 per year. Capital gains on shares are, in principle, not taxable.

Earned income

Earned income includes all benefits in cash or in kind received by an individual. A lump-sum expenses deduction is available, for example, for income from employment. However, if the actual business expenses exceed the lump sum amount, the actual expenses may be deducted.

Rates

The progressive individual tax rates (assessment year 2004) are as follows:

Taxable income (EUR)	Rate (%)
Up to 6,950.00	25
6,950.01 – 9,890.00	30
9,890.01 – 16,480.00	40
16,480.01 – 30,210.00	45
Over 30,210.00	50

The income tax is increased by municipal surcharges of, on average, 7 %. Some items of income are taxed separately at a flat rate.

Note that for individuals, as from 2004, the austerity surcharge, which was previously applicable, is cancelled for all individuals.

Inheritance tax and gift duties

Territoriality

If the deceased (or the donor) is a Belgian resident, all his personal or real estate, whether located in Belgium or abroad, will be subject to Belgian inheritance tax (or gift duty). If the deceased (or the donor) is not a Belgian resident, only the Belgian real estate will be subject to Belgian taxation. The above rules are subject to treaty provisions.

Taxable persons

The heirs and legatees (or donees), resident or non-resident, are taxable persons for inheritance tax (or gift duty) purposes. The liability is incurred at the time of death of the deceased (or gift).

Tax rates

The inheritance and gift tax rates are determined on the basis of the proximity of relationship between the deceased (donor) and the beneficiary and on the basis of the beneficiary's share in the estate.

Different rules apply if the deceased resided in the Flemish, the Walloon or Brussels regions.

In the Flemish region, for the closest relatives, an inheritance is split into an immovable and a movable part, which are taxed separately at progressive rates from 3 % to 27 %.

In the Brussels and Walloon regions, for the closest relatives, the progressive rates vary from 3 % to 30 %.

In all regions, a 3 % flat rate applies to the net value of invested assets in family-owned businesses and to the net value of shares in a family-owned company. However, the conditions to be fulfilled in order to apply the 3 % rate vary according to the region in which the deceased lived.

Gifts

The gift tax is imposed on the registration in Belgium of a written document in which a gift is granted. Registration is only required if a gift of personal property, wherever situated, is made by a written document, or if real property situated in Belgium is transferred by way of gift, whether or not by a written document. Therefore, movable property which is given 'from hand to hand' (ie.

without a written document), and gifts of real property located outside Belgium are not subject to gift tax. However, it should be noted that if the donor dies within three years from the date of making the gift, the gift is deemed to be a legacy and will be subject to inheritance tax. The national inheritance tax rates also apply to gifts.

If certain conditions are met, a 3 % rate will also apply for gifts of the net value of invested assets in family-owned businesses, and to the net value of shares in a family-owned company.

Social security taxes

Persons subject to social security

All Belgian employees receiving a salary are normally subject to social security. Foreign employees working in Belgium are normally liable for social security contributions and are entitled to the benefits of the scheme.

Citizens of an EU country, and of some non-EU countries with which Belgium has concluded a social security treaty, who are temporarily assigned to Belgium, or who are working both in Belgium and in their home country, will still be liable for social security contributions in their own country, despite the fact that they will be entitled to the benefits of the Belgian system.

Financial organisation of social security contributions

Contributions are borne partly by employers and partly by employees. The basis for calculating contributions is gross remuneration (multiplied by 1.08 in respect of blue-collar workers). Employers' contributions, amounting to approximately 35 %, are deductible business expenses for corporate income tax purposes. Employee contributions, amounting to 13.07 %, are deductible for the employee's income tax purposes.

National insurance benefits

The purpose of social security payments includes pension, sick leave, health insurance, unemployment, child benefit, etc.

Self-employed persons

Self-employed persons, including some directors, are liable to self-employed social security contributions, amounting to 19.65 % of net income, with a ceiling.

Other taxes

Net wealth tax

There is no wealth tax in Belgium.

Registration duties

The rate of registration duty applying on a transfer of goods depends on the nature of the transfer and the type of goods transferred. Taxation on real estate sales amounts in general to 12.5 % (10 % in the Flemish Region).

Real estate tax

Owners of real estate pay a real estate tax, calculated on the deemed rental value, at a rate which varies between 18 % and some 50 %, depending on the municipality where the property is located.

4. BDO offices

BDO has offices in the following countries:

Algeria	Hungary	Paraguay
Argentina	India	Peru
Australia	Indonesia	Philippines
Austria	Ireland	Poland
Bahamas	Isle of Man	Portugal
Belgium	Israel	Qatar
Bolivia	Italy	Romania
Botswana	Jamaica	Russia
Brazil	Japan	Saudi Arabia
British Virgin Islands	Jersey	Senegal
Bulgaria	Jordan	Singapore
Canada	Kazakhstan	Slovak Republic
Cape Verde	Kenya	Slovenia
Cayman Islands	Korea	South Africa
Chile	Kuwait	Spain
China	Latvia	Sri Lanka
Colombia	Lebanon	Sweden
Cyprus	Liechtenstein	Switzerland
Czech Republic	Lithuania	Taiwan
Denmark	Luxembourg	Thailand
Dominican Republic	Malaysia	Tunisia
Ecuador	Malta	Turkey
Egypt	Mexico	Turkmenistan
Estonia	Morocco	Ukraine
Fiji	Mozambique	United Arab Emirates
Finland	Namibia	United Kingdom
France	Netherlands	USA
Germany	Netherlands Antilles	Uruguay
Gibraltar	New Zealand	Vanuatu
Greece	Nigeria	Venezuela
Guatemala	Norway	Vietnam
Guernsey	Oman	Zambia
Hong Kong	Pakistan	Zimbabwe

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