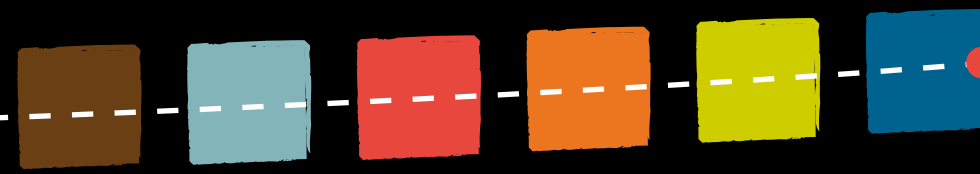
Setting up in Flanders

Investment Guide to Establishing a Business in Flanders



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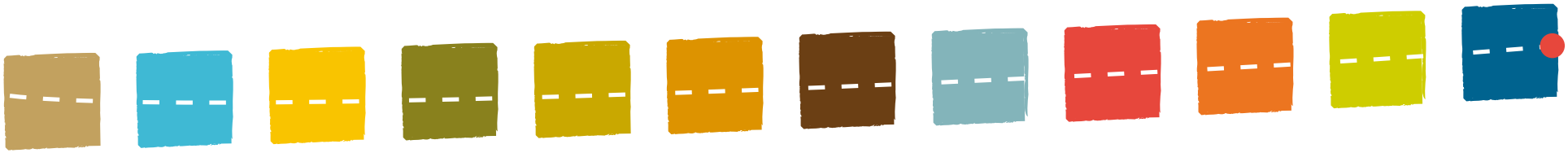

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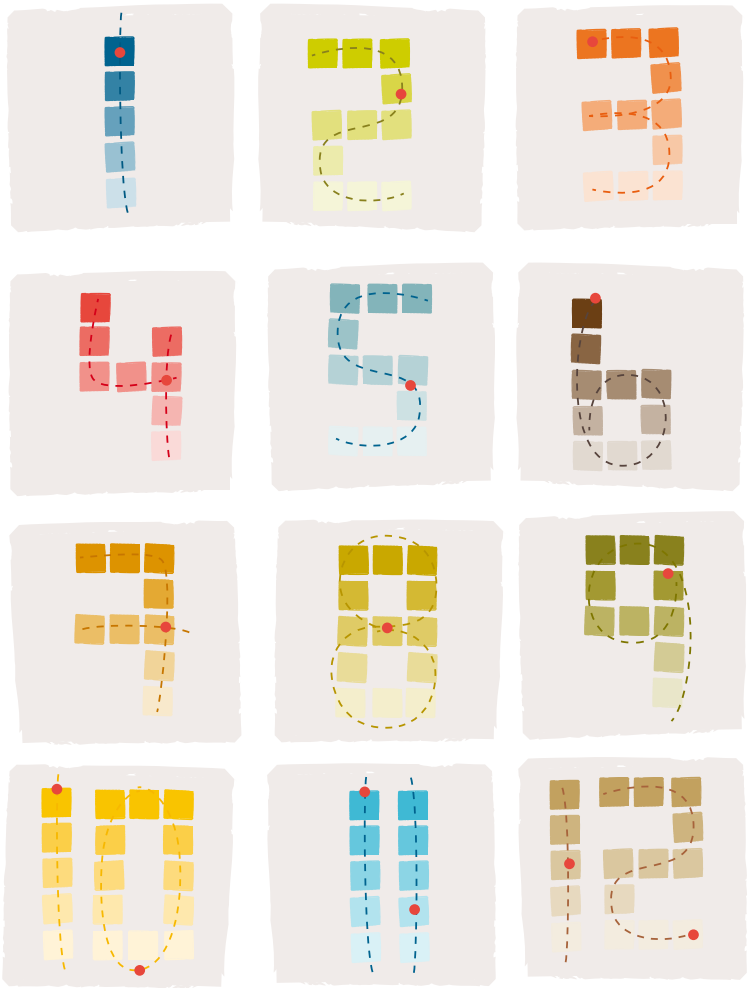


Content

Types of Business Entities

1

For a foreign investor interested in commencing commercial operations in Flanders, or Belgium as a whole, one of the first matters to consider is **the type of business entity** to establish.

Most foreign companies investing in Belgium either open a branch office or establish a subsidiary.

This section summarizes the main considerations when choosing between a branch, a subsidiary or another type of business entity.

Branch vs. Subsidiary

What is the legal distinction between a branch and a subsidiary for the purposes of setting up a foreign business presence?

A branch is not a legal corporate entity separate from the foreign company, whereas a subsidiary is considered a separate Belgian company. Practically speaking, a branch is merely an extension of the parent company; it does not have its own stock or its own board of directors, and its establishment generally involves fewer corporate formalities. However, in practice, filing a branch is a demanding process that requires the execution of formal duties and the translation of documents, which in some cases may represent a bigger constraint than those applicable to incorporating a company.

The subsidiary will have its own stock, articles of incorporation and bylaws. The subsidiary must hold shareholders' meetings and observe other corporate formalities. Usually, the subsidiary will be owned and controlled by the parent company.

What are the considerations in choosing between establishing a branch or a subsidiary?

Most foreign companies operating in Belgium choose to do so as a subsidiary of the parent company.

Establishing a subsidiary has the following advantages:

- Because the subsidiary and the parent company are separate legal entities, the parent company is not exposed to any liabilities of the subsidiary: indeed, the liability of the Belgian subsidiary is limited to its own assets. In contrast, a foreign investor remains fully liable for all the commitments of its branch office in Belgium: as a consequence, obligations incurred through such a branch can be enforced on the assets of the foreign investor, even if they are situated abroad.

- From a marketing viewpoint, a subsidiary will be regarded as a Belgian or European company, rather than a foreign entity;
- A subsidiary can benefit from several tax advantages:
- The ability to repatriate or distribute net profits with little or no dividend withholding tax;
- Subsidiaries can benefit from the advantages given under the double tax treaties concluded by Belgium;
- In most cases, qualification as a "parent company" under the EU Parent-Subsidiary Directive.
- Annual filing requirements are less stringent for subsidiaries than for branches. A branch's annual filing will reveal financial information about the foreign entity that it may prefer to keep confidential. This may be of particular concern to privately held US companies.

Establishing a branch has the following advantages:

- There is no minimum assigned capital requirement for setting up a Belgian branch;
- The opening of the branch does not require the intervention of a Belgian notary;
- Belgian corporate law, with a few exceptions, does not impose requirements such as a board of directors, distribution of profits or shareholders' meetings. However, Belgian corporate law does require the appointment of a legal representative;
- There are certain tax advantages related to setting up a branch operation, including:
- No dividend withholding tax on branch profits;
- In most cases, losses made by the branch can be offset immediately against foreign profits of the head office;
- Transfers of profits from the Belgian branch to its foreign head office can be made tax free.

What considerations must a company take into account when deciding to establish a branch or a subsidiary?

Companies are advised to choose carefully the legal format of their foreign entity since it may have an impact on their tax position due to "check the box" regulations.

Types of Subsidiaries

What types of subsidiaries can be established?

The most common types of company are the public limited liability company ("naamloze vennootschap", abbreviated to "NV"), the private limited liability company ("besloten vennootschap met beperkte aansprakelijkheid", abbreviated to "BVBA") and the co-operative company with limited liability ("coöperatieve vennootschap met beperkte aansprakelijkheid", abbreviated to "CVBA"). In these three types of company the partners' liability is limited to their contribution to the company.

Public limited liability company

In Belgium, the public limited liability company is selected mainly for larger enterprises.

Minimum capital

Its capital must amount to at least EUR 61,500. Each issued share must be at least 25% paid in upon incorporation, with a minimum of EUR 61,500. This minimum share capital must be paid in by the founders (at least two) who may be individuals or companies, residents or non-residents, Belgian citizens or not.

Shares

A public limited liability company can issue nominative or bearer shares. As from 1 January 2008, the bearer shares should be converted into dematerialized titles. A dematerialized title is represented by an inscription in account in the name of its owner by an approved institution responsible for keeping the accounts. The dematerialized title can be transferred from one account to another.

Management

At least three directors (individuals or companies, residents

or non-residents, Belgian citizens or not, shareholders or not) must be appointed to the public limited company. Where there are no more than two founders or shareholders, two directors are sufficient. When a company is appointed as a director Belgian corporate law requires the appointment of a permanent representative in order to perform the mandate of the company-director.

Private limited company

A private limited liability company is particularly interesting for small and privately held companies. When choosing this type of company, the investor should take into account that in certain aspects the BVBA is less flexible than the NV (e.g. there is no possibility of issuing convertible bonds or profit certificates, no possibility of paying interim dividends etc).

Minimum capital

Its minimum capital is only EUR 18,550. Each issued share must be at least 20% paid in upon incorporation, with a minimum of EUR 6,200. If the company has only one founder a minimum of EUR 12,400 needs to be paid-up. The share capital must be paid in by the founders (one or more) who may be individuals or companies, residents or non-residents, Belgian citizens or not.

Shares

All shares are nominative shares and have to be registered in a shareholders' register. Bearer shares cannot be subscribed. The transfer of shares takes the form of a declaration of transfer in the shareholders' register and is subject to certain transfer restrictions (a refusal right is granted to the non transferring partners).

The restrictions regarding the transfer of shares can be considered to be one of the disadvantages of the private limited company format.

Management

A private limited liability company is managed by one or more managers (individuals or companies, residents or non-residents, Belgian citizens or not) who may or may not be shareholders. When a company is appointed as manager a permanent representative needs to be appointed in order to perform the mandate of the company-manager.

Co-operative company

The co-operative company with limited liability is a very flexible company format designed for a corporation having a variable number of shareholders with variable contributions.

Minimum capital

Three partners are needed in order to constitute such a company. Its capital has two parts:

- A fixed amount, established in the articles of association, which must represent at least EUR 18,550 of issued capital and which must be paid in to an amount of EUR 6,200;
- A variable portion, which varies with the entry and exit of partners, capital increases or the taking back of shares.
- One quarter of all capital contributions must be paid in.

Shares

Its shares are always nominative. The transfer of shares takes the form of a declaration of transfer in the shareholders' register.

Management

A co-operative company with limited liability is managed by one or more managers who may or may not be partners.

Other Types of Business Entities

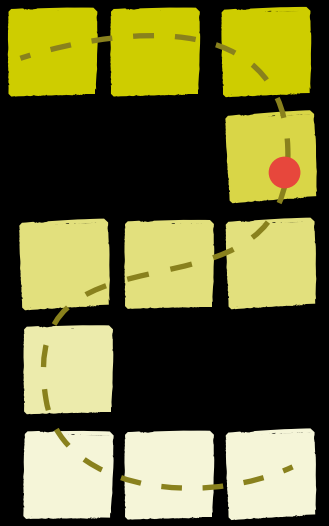
What other types of business entities may a foreign company establish?

Besides establishing a branch or a subsidiary, there are several other possibilities. Some individuals choose to operate as unincorporated sole proprietorships. Although partnerships, both general and limited, exist in Belgium, they are far less common than in other countries such as the United States.

There are several other legal structures that may be of interest to foreign investors. Organizations such as trade and other associations may choose to establish alternative entities such as non-profit organizations, philanthropic organizations or economic interest groupings. Also, joint ventures often opt for less common legal structures.

A prospective investor should discuss with his or her legal, tax and financial advisors which of these structures is most appropriate to his or her specific situation.

Starting a Business 2



This section outlines **the procedure for starting a business** in Flanders.

The formalities of starting a business and several other **practical issues** are covered, including **how to finance a company**, choose real estate and secure data protection and privacy.

Establishing a Branch in Flanders

What formalities must be fulfilled in the foreign corporation's jurisdiction?

Corporate resolutions

To form a branch office, the foreign corporation's board of directors (or any other competent corporate body under the law governing the company) must formally adopt resolutions deciding to open the branch office and appointing in Belgium a legal representative for the purposes of managing the branch and representing the company in dealings with third parties and in legal proceedings in connection with the activities of the branch.

Notarized and Apostilled documents

- Corporate resolutions: these resolutions must be signed by the board of directors of the foreign company. Thereupon, the public notary of the home country has to legalize the signatures of each member of the board of directors;
- Deed of incorporation and bylaws: a certified copy of the deed of incorporation and the bylaws of the foreign company must be submitted with an affidavit (certificate) from the company secretary and notarized by a public notary;
- The public notary should legalize the following documents:
- The corporate resolutions;
- A copy of the foreign company's memorandum and articles of incorporation and any modifications which may have been made thereto;
- A copy of the certificate of registration of the foreign company with the "Company House", if the home country's company legislation provides such a registration (i.e. an official document certifying the foreign corporation's existence).
- In addition, each document mentioned above needs to be submitted to the competent authorities to provide the certified copies with an apostil (i.e. an internationally

recognized official seal as per the Hague Convention of 5 October 1961). However, the use of an apostil is only possible if the head office is located in a country that adhered to the said Convention. If the Hague Convention does not apply, the documents mentioned above shall be legalized by the local Belgian Consulate or by the Belgian Ministry of Foreign Affairs.

What formalities must be fulfilled in Flanders?

Translate documents into Dutch

A sworn translation of the aforementioned documents will be required as if the original documents are in a foreign language. A free translation is allowed for the annual accounts and the consolidated accounts.

File accounts with Belgian National Bank

The most recent annual accounts and consolidated accounts (if any) of the foreign company must be translated into Dutch and filed with the National Bank of Belgium, the country's central reserve bank. The certificate from the National Bank of Belgium, confirming that the annual accounts and the consolidated accounts (if any) have been duly filed, must be filed with the Registrar Office of the Commercial Court.

This requirement applies to privately held as well as publicly held companies.

File documents with local Registrar Office of the Commercial Court / Publish the corporate resolution in the Belgian Official Gazette

The aforementioned translated documents as well as the original documents, together with a summary, must be deposited at the Registrar Office of the Commercial Court (of the district where the branch is established) for publication in the annexes to the Belgian Official Gazette (Belgisch Staatsblad).

Obtain a corporate registration number

Enterprises doing business in Belgium have to be registered on the corporate database, the so-called Crossroads Bank for Enterprises (Kruispuntbank voor Ondernemingen) via a Corporate Office (the socalled Ondernemingsloket). This new procedure replaces the "old" registration procedure of a company at the commercial registry.

Once the branch is registered at the Crossroads Bank for Enterprises (CBE), it will receive a corporate registration number that has to be mentioned on the enterprise's correspondence, documents and invoices.

A branch cannot be registered at the CBE unless the legal representative gives proof of good management skills. Consequently, a certificate of basic knowledge of managerial skills needs to be obtained based on either a diploma or the experience of the legal representative. This formality might sometimes prove to be time consuming but can be avoided if the foreign corporation can prove that it (or its parent) does not qualify as a small or medium sized company (i.e. has more than 50 employees, a turnover above EUR 7,000,000 or a balance sheet exceeding EUR 5,000,000). In this respect, a declaration of honour ("affidavit") by the foreign corporation or its parent is sufficient.

Apply for a VAT identification number

From the moment the branch is registered at the CBE it can apply to activate a Belgian VAT-number. In principle, the Belgian VAT-number will be the same number as the enterprise's corporate number at the CBE. The VAT-authorities will activate this VAT-number as from the moment Form 604A is filed. This application form must be signed by the legal representative. His/her signature need not be legalized.

The value-added tax is like a general sales tax. It is neither an import duty nor other levy. Generally speaking, almost every business is required to charge VAT to its customers and therefore must obtain its own VAT number. Among the types of companies that are not currently required to obtain a VAT number are insurance companies.

While the VAT code is consistent throughout the European Union, the VAT percentage may differ from country to country. The VAT percentage depends on the type of product sold or service rendered. In Belgium, the standard VAT rate is 21%, although under certain circumstances rates of 0%, 6% or 12% apply. The VAT charged by the branch to its customers must

be transferred to the State. However, the branch may deduct from the VAT received the amount of VAT paid to its suppliers. Consequently, having a VAT number allows the branch to reduce the cost of its supplies, as VAT paid is deductible.

Open for business!

As stated above, any foreign company that intends to open a branch in Flanders must appoint a person who will be authorized to represent the company in dealings with third parties and in legal proceedings for the activities of the branch. This person is referred to as the "legal representative" of the company. The legal representative does not need to be a Belgian national or a Belgian resident.

In addition to all powers that have been granted to him/her by the company, the legal representative is required by law to carry out all disclosure formalities outlined above.

However, it should also be noted that such a legal representative has the same liability as a director of a Belgian company.

Additional information about establishing a branch in Flanders

What are the costs of establishing a branch in Flanders?

In addition to the fees for legal and tax advisers, the costs of setting up a branch include:

- Translation fees (English into Dutch) depending on the translation office. The total costs for the translation of all documents should not be underestimated;
- The expense of publishing the above-mentioned documents in the Belgian Official Gazette: EUR 214,53 (VAT included);
- Registration at the Crossroads Bank for Enterprises: EUR 71 (not subject to VAT).

How long does it take to establish a branch in Flanders?

The establishment of a branch usually requires one month, assuming the company has prepared all necessary documents/ translations and procedures are handled smoothly by the authorities. The amount of time required to complete all formalities for the establishment of a branch depends mainly on translation work. Another timing element is the legalization and apostille requirements.

Registration at the Crossroads Bank for Enterprises can take place within days of the filing with the Registrar Office of the Commercial Court. From that moment on, the branch may commence its commercial activities. If the legal representative must prove his/her management capabilities and/or must have a work permit or a professional card, however, the time required to process these applications must also be taken into account.

Registration with the VAT authorities usually takes approximately three weeks from the filing of the application form.

The publication of the opening of the branch in the Annex to the Belgian Official Gazette can take some weeks but the branch may commence its commercial activities prior to the date of publication.

Can we freely determine the corporate name?

Since the branch is not a separate legal entity it must operate under the name of the company by which it is established.

Are there any government controls on starting a business?

No prior government authorization or business permit is needed to start a business, with the exception of some specific industries (e.g. banking, insurance, travel indemnity, pharmaceuticals and broadcasting).

In which language should the corporate documents be drawn up?

Branches are subject to Belgian regulations on the use of languages. All documents required by law must be drafted in one of Belgium's official languages (i.e. French, Dutch or German), depending on the region where the branch has its registered office.

If the branch is located in Flanders, these documents must be drafted in Dutch. If its registered office is located in the Brussels

Capital region, these documents can be drafted in either Dutch or French or even in both languages.

Formalities to be complied with by the branch in the course of its activities.

In the course of its activities the branch office will be compelled to file and publish any and all resolutions from the foreign company that are of public interest (i.e. any modification related to the deed of incorporation or bylaws, name, registered office of the head office, the nomination of the directors of the head office, the liquidation or bankruptcy of the head office or the closure of the branch). Branches are obliged to keep accounting records in accordance with Belgian accounting rules but are not required to publish their own annual accounts. Only the accounts of the foreign company (of which the branch is a part) need to be filed and published. The parent company's accounts must be audited and certified according to its national regulations. If the aforementioned documents are in a foreign language, they will have to be translated into Dutch.

Who should be appointed as a legal representative?

The law does not require the legal representative to be Belgian, nor do any other nationality requirements apply. Neither does the legal representative need to be a Belgian resident. Proper consideration should be given to work permit regulations, however. Since the legal representative is supposed to carry out daily management of the branch and sign all official documents, it is strongly recommended however that he/she is based in Belgium.

Establishing a Subsidiary in Flanders

How does a foreign investor establish a subsidiary in Flanders?

Introduction

Belgian company law recognizes several forms of companies but in international business the public limited liability corporation ("naamloze vennootschap", abbreviated to "NV") and the private limited liability company ("besloten vennootschap met beperkte aansprakelijkheid", abbreviated to "BVBA") are the most convenient forms. Nevertheless, the legal steps required when establishing a company are similar for all types of companies. The incorporation procedure is similar for all such types and consists of the following 10 steps. Accounting firms can assist with the implementation of all steps.

1. Draft an incorporation deed
2. Draft a business plan
3. Deposit of the share capital in a blocked bank account
4. Draw up the appraisal reports (only in the event of a contribution in kind)
5. Notarize the incorporation deed
6. Register the incorporation deed
7. File for publication in Belgium's Official Gazette
8. Obtain a corporate registration number
9. Apply for a VAT identification number
10. Open for business!

Draft an incorporation deed

The incorporation deed will be drafted by a Belgian public notary based on the specifications of the shareholders. The incorporation deed must among other things state the details (name and address) of the shareholders who incorporate the company and specify the amount of the capital contribution made by each shareholder. At least two shareholders are required to establish a stock corporation. Often the foreign parent company will hold all but one of the shares and one of the company's senior executives will hold the one remaining share. In such cases, the foreign parent company typically makes a declaration in the deed of incorporation to the effect that it accepts the entire founders' liability. The executive will then not be subject to such liability. The incorporation deed also includes the company's articles of association ("statuten"), which determine the rules governing the company.

The directors will be appointed on incorporation of the company.

Draft a business plan

New legal entities must prepare a business plan covering the first two years of operation. A Belgian accountant can help to draft the business plan. The business plan must include a summary balance sheet that justifies the amount of capital made available by the shareholders in order to run the business. The business plan is not public but remains in the files of the notary who enacted the incorporation deed. If the business goes bankrupt within three years of the date of incorporation, the court at that time may decide 6 Starting a Business to look at the business plan to check whether or not the founders can be found liable for failure to fund the company with sufficient start-up capital. In certain cases the founders can be held liable for the debts of the bankrupt company. Branches are not required to draw up a business plan.

Deposit of the share capital in a blocked bank account

In the case of a contribution in cash, a bank account must be opened in the name of the company "to be incorporated" with a bank in Belgium and each shareholder must deposit the amount to be paid up on its shares in this account, prior to the execution of the incorporation deed. This account remains temporarily "blocked" until the incorporation of the company, or failing such incorporation, for a period of three months, after which the funds are reimbursed to the candidate-founders who request this. The bank will issue a certificate, which must be delivered to the notary on the date of execution of the incorporation deed, confirming that the paid-up amount of the capital is in the bank account. After the incorporation, the Belgian public notary will give his consent for unblocking the deposited funds (via a certificate sent to the Bank and confirming the incorporation) after the notarial deed is deposited at the Registrar Office of the Commercial Court. Belgian banks are familiar with the procedure.

Draw up the appraisal reports

The shareholders may also make a contribution in kind to the company consisting of assets other than cash, provided that such assets have an economic value (e.g. real estate, shares in another company, a claim for the payment of an amount of money etc). In such cases, an appraisal report must be issued by an auditor. This report must describe the assets and the valuation methods applied. In addition, the founding shareholders must prepare a report stating the reasons why the asset contribution is in the interest of the company and, as the case may be, the reasons why they do not agree with the findings of the auditor's report. Both reports must be delivered to the notary on the date of execution of the incorporation deed.

They, together with the incorporation deed, must be filed at the Registrar Office of the Commercial Court by the notary.

Notarize the incorporation deed

The incorporation deed must be recorded in a notarial deed to be executed by the founders and a Belgian public notary. The founding shareholders must be present or represented when the corporate deed is enacted before the public notary. To be represented, a power of attorney must be provided and attached to the incorporation deed. The signature on such a power of attorney need not be legalized.

Register the incorporation deed

A corporation obtains a legal personality separate from that of its shareholders as of the date of filing of the incorporation deed at the Registrar Office of the Commercial Court in the judicial district where the company has its registered office. This filing is handled by the Belgian notary who executed the incorporation deed. The notary is required by law to file the incorporation deed within 15 days. In principle, a company may not enter into any transaction (e.g. lease of premises, purchase of assets etc) until it has a legal identity. However, it is possible for one or several persons to carry out a transaction on behalf of a company "in incorporation" prior to the moment when it acquires a legal identity.

File for publication in Belgium's Official Gazette

The company's incorporation deed must be filed for publication with the Belgian Official Gazette.

Obtain a corporate registration number

A company may not commence business activities prior to its registration at the Crossroads Bank for Enterprises (CBE). It must be registered at the CBE in the judicial district where it has its registered office.

Apart from the fulfillment of other conditions, a company cannot be registered at the CBE unless people having management powers (typically the managing director) give proof of good management skills. Consequently, a certificate of basic knowledge of managerial skills needs to be obtained, based on either a diploma or the experience of the manager. This formality might sometimes prove to be time consuming but can be avoided if the company can prove that it (or its parent) does not qualify as a small or medium sized company (i.e. has more than 50 employees, a turnover above EUR 7,000,000 or a balance sheet exceeding EUR 5,000,000). In this respect, a declaration of honour ("affidavit") by the foreign corporation or its parent is sufficient.

Apply for a VAT identification number

As a general rule, a subsidiary must also be registered with the local VAT Administration.

Open for business!

A public limited liability company ("NV") is managed by a board of directors composed of at least three persons. However, the minimum number of directors can be reduced to two if the company has only two shareholders. Daily management powers may be granted by the board of directors either to a director (who is usually referred to as the managing director - "gedelegeerd bestuurder"), or to any other person (generally an employee of the company) who is usually referred to as the general manager ("algemeen directeur"). The person to whom daily management is delegated represents the company for such daily management.

A private limited liability company ("BVBA") is managed by one or more managers.

Additional information about establishing a subsidiary in Flanders

What are the costs of establishing a subsidiary in Flanders?

Different from a branch, the establishment of a subsidiary in Flanders does not include either translation costs or administrative legalization formalities and costs. However, a fee of approximately EUR 1,500 must be paid to the public notary who will enact the incorporation deed. Other incorporation expenses include costs in relation to the publication of an abstract of the notarial deed in the Belgian Official Gazette (EUR 214,53 - VAT included), stamp duties and registration at the Crossroads Bank for Enterprises (EUR 71 – not subject to VAT). With effect from 1 January 2006 no capital duty is due.

How long does it take to establish a subsidiary in Flanders?

A public limited liability corporation or a private limited liability company can be established within a short period of time. There are no government approvals or waiting periods. If the foreign investor has approved the articles of association, opened a bank account and prepared its business plan, the incorporation is a matter of days. However, attention should be given to work permit regulations and the certificate of proof of good management skills, which might be delaying factors.

Can we freely determine the corporate name?

The choice of a corporate name is in principle free. However, the name must be sufficiently distinct from that of any other company so as to avoid confusion. It is recommended that a prior name check be carried out. This formality could be done by a Belgian public notary.

Are there any government controls on starting a business?

As a general rule, no filing with, or approval from, any governmental authority in Belgium is required prior to the incorporation of a company.

However, if the company intends to engage in certain regulated activities (e.g. banking or insurance activities, pharmaceuticals, restaurants etc) prior approval from some governmental authorities will be required before the company may be authorized to carry out such activities.

In which language should the corporate documents be drawn up?

The language of the incorporation documents depends on the location of the subsidiary's registered office: Dutch in Flanders and either Dutch or French in the Brussels Capital Region. If the company has one or more places of business in different Belgian linguistic regions, the regulations on the use of languages in each of these regions must be complied with.

Filing annual accounts with the Belgian National Bank

A Belgian company has to comply with Belgian accountancy law and keep a full set of accounting records. Furthermore, every business operating must file a summary of its financial accounts on an annual basis. There are detailed rules and regulations regarding the type of financial information that must appear in these reports.

For more detailed information, it is advisable to consult an accountant or attorney.

Real Estate Issues

What should be considered when choosing real estate for a new business?

A new company developing activities can rent (lease), buy or build premises. Most small and medium sized businesses start by renting space according to their particular needs. One of the advantages of purchasing a building is that the acquisition price will be considered to be part of the "calculation base of the total investment" for purposes of obtaining investment incentives. On the other hand, buying premises will also have certain tax implications, such as the levy of a registration duty of 10% in Flanders and 12.5% in the rest of Belgium of the purchase price, which is, however, deductible for corporate income tax purposes.

Who can assist in finding appropriate premises?

Flanders Investment & Trade, in co-operation with local development authorities and/or real estate advisers, will prepare an overview of potential locations in the different areas of Flanders, according to the specifications of the potential investor. Real estate brokers can also be consulted.

Additionally, local development authorities provide the opportunity for start-up businesses to locate in "business centers" offering secretarial and communication services at competitive prices. Business centers are actively promoted and encouraged as a means of reducing costs for start-up companies. A significant consideration in choosing a location might be the availability of EU incentives in certain development zones in the country.

How are tenants protected under a commercial lease?

The Belgian Law of 30 April 1951 on commercial leases gives special and mandatory protection to tenants whose commercial premises are directly accessible to their customers for retail purposes.

More importantly, the law provides for an easy and favorable renewal of the lease up to three times for subsequent nine-year periods. Furthermore, tenants are allowed to assign their lease as part of the total sale of the business. While the purpose of the law is to protect retail commerce, it can also be made applicable, by mutual agreement of the parties, to other types of leases.

What is the duration of a commercial lease?

One of the typical features of a so-called commercial lease is that the lease is contracted for a nine-year period but can, under certain conditions, be terminated by either party after any three-year period, albeit it under specific conditions for the lessor. A similar lease agreement is also often contracted in respect of premises that are not directly accessible by customers.

What kind of leases are there for offices, warehouses etc?

Under the strict definition of the Law of 30 April 1951 above, when the premises are not rented for purely commercial purposes (i.e. when the premises are rented for the purposes of installing HQs, offices, warehouses, distribution centers etc), landlords and tenants enjoy the greatest freedom to settle their mutual relationships and, in particular, to fix the duration of the lease and the termination options thereof.

What is a lease with an option to buy?

A company can negotiate with the landlord an option to purchase the building at some point during the term of the lease. Belgium does not impose restrictions on non-Belgian businesses or persons purchasing buildings or land.

Must a lease be in writing?

Leases must be registered for tax purposes only and therefore must be in writing, stipulating the duties and obligations of the

respective parties. Under Belgian Law, registering a lease also gives more protection to the tenant when the premises are sold by the landlord to a new owner during the execution of the lease.

Must tenants provide a security deposit?

Generally, a landlord will require a deposit which usually equals three to six months rent. This can be provided by a deposit in cash with a bank or by a bank guarantee. In the latter case, the bank will charge the tenant a small fee.

Is there any protection for residential leases?

Residential leases are governed by a set of specific and mandatory rules designed to protect the tenants. These rules are especially stringent if the rented accommodation is the principal residence of the tenant and his family. The protection includes:

- A cap on rent increases, limited to a yearly indexation based on consumer prices;
- Advance notice of termination and
- The possibility of having short-term leases for up to three years (a few months, one year etc).

Data Protection/Privacy Requirements

Are there any restrictions on the processing of personal data?

The European Union directive on data protection sets a number of requirements with which companies processing personal data in any EU country must comply.

Belgian law has implemented this directive. When a company established in Belgium undertakes activities that involve (directly or indirectly) the processing of personal information about, for instance, its employees or customers as individuals, it must abide by the Belgian data protection regulations. The processing of data includes any business operations performed upon personal data such as the collection, recording, storage, use, dissemination or destruction of data. The data protection rules apply to the manual processing of personal data (provided the personal data is, or will be, included in a filing system) and to the processing of personal data by automatic means (e.g. by computer), regardless of whether this is done routinely or only once for a specific purpose.

The processing of personal data is permitted if certain conditions are met - for example, when the individuals concerned have given their consent or when processing is necessary for a company to perform a contractual obligation towards the data subject.

The manner of processing is also subject to specific legal requirements. In particular, data can be collected only for legitimate, specific and explicit purposes. If there is further processing for other reasons, the data subjects must, in principle, give their consent to the new processing. There should also be a relevance between the data collected and the purpose of the processing. In addition, the processed data must be accurate and, where necessary, be kept up to date. It should also be retained only as long as it is necessary, in view of the purpose of the processing and, sometimes, according to the type of data processed.

Companies engaged in data-processing operations may have to make available to individuals the means to access the data they process on their behalf. They must also give data subjects, at any time, the opportunity of rectifying their data or asking for rectification. Individuals are entitled to object to a specific processing if certain conditions are met: for instance, when processing is related to direct marketing.

Which authority is responsible for administering data protection rules in Belgium?

A company planning to process personal data by automatic means must submit detailed information to the supervisory authority (the Commission for the Protection of Privacy), prior to any processing. Some processing activities, nevertheless, do not have to be notified in cases prescribed by legislation (e.g. data processing relating to the administration of staff or salaries in a company etc).

Consequently, a company wishing to process customer information for direct marketing purposes falls within the scope of current law and needs to inform the customer and notify the Commission for the Protection of Privacy. The notification shall contain specific information relating to data processing.

The notification can be made either on paper form or by the Internet. The Commission for the Protection of Privacy has issued standard paper forms that can be used for notification. These forms can be obtained from the Commission by post or they can be downloaded from the Commission's website (http://www.privacy.fgov.be).

Are there any restrictions on the transfer of data to non-EU countries?

Companies are permitted to transfer personal data to third (non-EEA) countries only if the third country in question ensures an adequate level of protection.

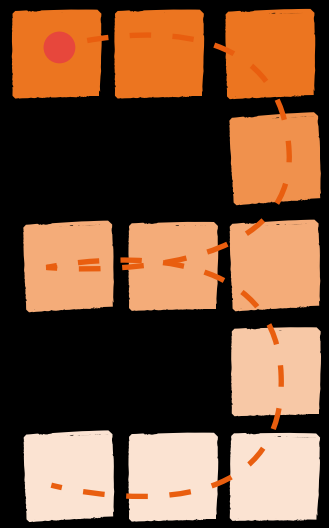
The adequacy level shall be assessed in view of all the circumstances surrounding the processing operation, such as the type of data processed, the purpose and duration of a given transfer etc.

The European Commission may issue decisions that confirm whether a given country ensures an adequate level of protection. If a European Commission decision is issued, personal data can be transferred from the EU member states to the country in question without the company being obliged to give additional guarantees. Countries covered so far by the European Commission's decisions are: Switzerland, Canada, Guernsey, the Isle of Man and Argentina. As far as data transfers to the US are concerned, US-based companies must adhere to the Safe Harbor Privacy Principles issued by the US Department of Commerce (and annexed to the "safe harbor" decision of the European Commission).

If no European Commission decision is issued with respect to a given country, companies planning to process personal data outside the European Union must ensure that their data processing operation falls within one of the exceptions to the ban (such as the use of contractual guarantees).

The European Commission has issued model contractual clauses that can be inserted in private agreements involving transfers of personal data to third countries.

Business incentives 3



In order to stimulate economic growth the federal and the regional governments have implemented certain **incentives for businesses** that establish operations in Belgium.

This section describes the **three types of incentives** available to companies: cash grants, employment and training incentives and tax-related incentives.

Cash Grants

What kinds of cash grants are available?

Cash grants are available for investments in tangible fixed assets such as buildings and equipment and in some cases additionally for investment in some intangible assets. Cash grants are calculated as a percentage of the approved investment budget.

What factors determine whether a company qualifies for a cash grant and, if so, the amount of the cash grant?

The maximum level of cash grant available depends on the size of the company (small, medium or large) and the amount of money the company plans to invest.

If the investment exceeds 8 million EUR over the next three years the company can apply for strategic support.

To be eligible for grants companies must be located in an EU development zone. In addition, a company must also invest more than 8 million EUR over the next three years and so therefore automatically has to apply for strategic support.

Subsidies for strategic investments can range from 7.5% to 10% depending on different criteria with a maximum of 1 million EUR.

What kinds of assistance can Flanders offer a potential foreign investor interested in finding out about cash grants?

Flanders Investment & Trade can assess a company's eligibility for obtaining any of the available cash grants. Flanders Investment & Trade will provide information and assistance with the filing of the actual grant request with the appropriate authorities within the Flanders Ministry of Economics.

Is your company considered small, medium or large according to EU standards?

A small company must satisfy both of the following two conditions:

1. Maximum employment of 50 people in the Belgian entity;
2. Maximum turnover of 10 million EUR or a balance sheet total of maximum 10 million EUR of the Belgian entity together with the parent company;
   To calculate the above data, the data of each partner enterprise and/or linked enterprise has to be taken into account.

A medium-sized company must satisfy both of the following two conditions:

1. Employment of 51 to 250 people in the Belgian entity;
2. Annual turnover of no more than 50 million EUR or a balance sheet total of maximum 43 million EUR of the Belgian entity together with the parent company.
   To meet the conditions, the data of each partner enterprise and/or linked enterprise will be taken into account.

A large company is a firm that exceeds at least one of the criteria specified above for medium-sized companies.

What are EU development zones and what are the benefits of locating in one?

These are business development zones defined by the European Union under the European Regional Development Fund and where regions can provide more substantial business incentive grants.

Where are EU development zones located in Flanders?

Flanders has European Union development zones in each of the provinces except Flemish Brabant. During the period 2008-2013 the following cities are classified as development zones: Diksmuide – Lo-Reninge – Ieper – Middelkerke – Oostende – Wervik – Ronse – Herstappe – Tongeren – As – Beringen – Genk – Leopoldsburg – Heusden-Zolder – Bree – Lommel – Maaseik – Hechtel-Eksel – Helchteren – Dilsen-Stokkem– Lanaken – Maasmechelen – Balen – Dessel – Mol.

What is an ecological subsidy?

From January 2009, an ecological subsidy of 20% (for large companies) or 40% (for SMEs) can be obtained (with a maximum of 1,75 million EUR) for that part of the investment that qualifies as "ecologically friendly," in accordance with the requirements of the Flemish administration. That part of the investment is no longer eligible for any of the above-mentioned cash grants.

Employment and Training Incentives

What employment-related incentives are available?

The Belgian Government offers several opportunities to reduce social security contributions for employers. In general, in addition to the so-called "structural reduction" there are also different programs targeted at specific groups.

In particular, the Belgian social security distinguishes between the following six target groups:

- Older employees;
- The long-term unemployed;
- First new hires;
- Young hires;
- Employees involved in the reduction of working hours (below 38 hours/week) and the introduction of a four-day week;
- Employees affected within the context of a re-organisation.

For each of the abovementioned target groups specific regulations/programs are provided in order to help reduce the employer's social security contributions. We will briefly highlight some of them below:

Contributions vary from a reduction to a lump sum. We would like to highlight some of them, but for more programs and details we kindly request that you contact Flanders Investment & Trade.

Employment Plan – Plan Activa

A reduction in social security contributions is possible for all employees that have been unemployed for a certain period of time (at least six months). This results in a substantial reduction in total annual payroll costs.

Retaining older employees above the age of 50

When employees aged 50 or older remain employed in a company or are newly recruited in a company, specific reductions in social security contributions are granted.

Re-hiring after resignation due to a re-organisation

An employer hiring a resigned employee (after a re-organisation) can benefit from a reduction in social security contributions.

Young hires

To encourage the employment of young people, specific reductions are granted for employees:

- younger than 26 years of age;
- lower educated with a starter job;
- blue or white-collar;
- employed half- or fulltime, for a definite or indefinite period of time.

First new hires

The first hiring program provides a reduction in social security contributions for the first, second and third hired employees;

Special regulations

Special regulations are provided for certain categories of people such as disabled employees and immigrants;

Additional personnel for R&D projects

Companies that employ personnel holding a university or a Master's degree who are assigned to R&D projects can claim partial exemptions from advance payments on wages.

How are these employment incentives granted?

Reductions are automatically granted by the federal government upon filing of the quarterly DMFA application by the employer. No pre-financing is required nor is there an administrative burden on the company.

Please note that these are only some of the measures used to reduce labor costs. For more information on the abovementioned or for other target group reductions, we kindly request that you contact Flanders Investment & Trade.

What types of human resources assistance can the Flemish Government's Employment Agency provide to companies?

The official Flemish Employment Agency (VDAB) has an excellent reputation within the business community as a provider of qualified applicants and customized training. The agency has access to a large, comprehensive database of unemployed job seekers and a substantial database of employed job seekers. It also provides recruitment services and can conduct and evaluate detailed psychological and technical tests.

The VDAB can also provide companies with training programs and training subsidies for variable lengths of time. Because of the multitude of programs, the potential investor is advised to meet with VDAB representatives in order to design a customized training program. As an example, in close cooperation with the VDAB, it is possible for a company to select candidates and train them according to their experience and skills in a specific job category.

What type of on-the-job training can the VDAB provide?

The on-the-job training division of the VDAB is devoted to training candidates to acquire skills for which there is a shortage in the labor market, or training those who are currently employed or unemployed.

Employees who wish to follow a training program which is either recognized by the VDAB or organized by the VDAB itself, can use training cheques (opleidingscheques) to help cover the costs for that training period. An employee can acquire training cheques up to a maximum of € 250 per calendar year.

Although the VDAB itself is not always involved in the training, it does approve the entire training process. On-the-job training is extremely flexible and requires minimal administration.

Individual training in a company (IBO)

An employer can benefit from a reduction in payroll costs for

a new employee who is entitled to follow a training scheme because the employer only has to pay productivity compensation and does not have to pay the employee a salary or social security contributions. The person is not formally on the company's payroll. Such training lasts between 4 and 26 weeks and is minimum part time.

Budget for Economic Advice

The Budget for Economic Advice allows SMEs to obtain financial support for training and advice expenses. The system also covers support for mentorship and the acquisition of knowledge. The training and advisory services must be delivered by recognized institutions. The maximum support is 35% of the accepted costs.

Are other training grants available?

Under certain criteria, companies may benefit from additional European grants for vocational training projects from the European Social Fund. Additionally, the Flemish Government provides grants for strategic training projects that deliver indirect added value for the region. Both large companies and SMEs must spend over EUR 450,000 over three years to get strategic support for their training program. Depending on various criteria subsidies for strategic training can range from 20% to 25%.

To check whether your company qualifies for these types of grants, contact Flanders Investment & Trade.

Tax-Related Incentives

Expatriate tax incentives

What tax incentives are available to foreign executives?

In order to reduce the employment cost for foreign expatriates, thereby encouraging multinational companies to transfer their employees to Belgium, the Belgian tax authorities introduced a special tax regime for executives and specialists in 1983. Provided that both the employer and the employee meet the qualifying conditions for the special tax regime, certain beneficial tax rules will apply.

Given the fact that qualifying expatriates will be considered Belgian non-residents, they are only taxed on their Belgian source income. They will be exempt from taxation in Belgium on foreign passive sources of income such as dividends and real estate. Although expatriates are obliged to declare their worldwide earned group income in Belgium, they will not be taxed on the part of their remuneration corresponding to the number of days worked abroad (travel exclusion).

In addition, expatriates will not be taxed on significant allowances and reimbursed expenses paid to cover the cost of the assignment to Belgium (costs proper to the employer). Tax-free reimbursement of school fees and non-recurring costs such as moving and installation costs are unlimited. Reimbursement of recurring expenses such as cost of living allowance, cost of housing allowance, tax equalization and home leave is limited to EUR 11,250 or EUR 29,750 (depending on the nature of the assignment).

Research and development personnel tax incentives

What types of incentives exist to stimulate research and development?

Provided that they fulfill the requirements, companies employing researchers who work on research projects in partnership with a university or high school located in the European Economic Area, the National or Flemish Fund for Scientific Research or other recognized scientific institutions, are allowed to only pay to the authorities 25% of the amount of the professional withholding taxes of their scientific personnel, as a reduction of the total employment cost. The same applies to scientific personnel working for so-called "Young Innovative Companies," for which specific conditions need to be met.

Recent changes have broadened the scope of the legislation providing for an exemption of payment of withholding taxes. The exemption of payment of withholding taxes is now also applicable to companies that are not recognized as research centers or as a "Young Innovative Company". The exemption is available for all personnel engaged part- or full-time in Research and Development activities if they have obtained a Master's degree that is on the list of qualifying Master's degrees produced by the government.

With effect from 1 July 2009 the exemption percentage has been set at 75%.

Overtime, night and shift work tax incentives

What tax incentives are available to reduce the labor cost of overtime, night and shift work?

Employers are allowed to deduct 10.7% of the taxable remuneration of night and shift workers from the amount of professional withholding tax that they have withheld and should pay to the authorities.

Notional Interest Deduction

The notional interest deduction applies with effect from tax year 2007 (accounting years ending on 31 December 2006 or later). Under the notional interest deduction, a company will be able to make a deduction from its taxable profits depending on the portion of equity financing. The regime is applicable to all Belgian companies and to Belgian establishments of foreign companies, whatever their size may be.

The notional interest deduction will be calculated by multiplying the total equity by the interest rate for 10-year government bonds (OLOs). The rate is 3.8% for tax year 2010. The percentage is equal to the average of the interest rate for 10-year government bonds for the penultimate calendar year preceding the tax year. For instance, for tax year 2009, the applicable percentage is the average of the OLO interest rate for 2007. The law sets a maximum deviation of 1% from one year to the next and a maximum percentage of 6.5%, although the government may change the percentage by Royal Decree if it is deemed to be necessary.

The law also includes measures to prevent abuse of the notional interest deduction. To prevent the same equity from generating deductions for different taxpayers, the following items are excluded from the base on which the deduction is calculated:

1. The net book value of the shares the company holds in its own share capital;

2. Shareholdings recorded as financial fixed assets;

3. Shares held in collective investment companies generating income eligible for the dividends received deduction;

4. The net book value of assets of permanent establishments held by the company in countries that have concluded a tax treaty with Belgium;

5. The net book value of real estate (or entitlements in real estate) held by the company in countries that have concluded a tax treaty with Belgium;

6. The net book value of fixed assets to the extent that the costs of these assets unreasonably exceed the needs of the company;

7. The net book value of assets (e.g. art and jewels) that are not expected to generate regular income;

8. The pro rata net book value of real estate or other entitlements in real estate, privately used or occupied by directors (or their spouse or children) receiving income from the company holding the real estate rights;

9. Recorded but unrealized capital gains (referred to in article 44, 1, 1° Income Tax Code), provided they do not relate to assets referred to in points 4, 5, 6 and 7 above.

Investment deduction

Companies acquiring new tangible or intangible fixed assets used in Belgium for business purposes can (under certain circumstances) claim a deduction from their taxable profit amounting to a percentage of the acquisition or investment value of those investments.

The investment deduction does not affect the depreciation base. It is treated as a tax credit in the tax return and (when the profit is insufficient) can be carried forward indefinitely but with certain limits as to the amount.

What investment deduction rates are available for companies?

Either a one-time or a spread investment deduction may be taken at the option of the taxpayer. The onetime investment deduction regime is equal to a certain percentage of the cost price of the investment. The rates are as follows:

- 3% for investments made in tangible fixed assets which are

used solely for the production of recycled packaging (figures based on tax year 2009).

- 15.5% for energy-saving investments, patents or R&D investments leading to environmentally friendly products (figures based on tax year 2009);

- 22.5% for investments in the security of a company's premises (fire and theft);

- 30% for investments in sea-vessels.

The spread investment deduction is spread over the depreciation term of the capital investment made. The following rate applies:

- A 22.5% spread investment deduction for R&D investments leading to environmentally friendly new products (figures based on tax year 2009).

What types of investments are excluded from the investment deduction?

The following investments (amongst others) are not eligible for the investment deduction: inventory, cars, land, real estate to be sold by real-estate companies, assets depreciated over less than three years, assets not used solely for business purposes and assets leased under an operational lease contract.

Tax credit for research and development

Companies investing in fixed assets that qualify for the increased investment deduction for patents or for research and development will have the option to apply for a tax credit instead of an investment deduction. The choice for a tax credit will be irrevocable. The tax credit for research and development can be carried over to the four subsequent assessment years. The unused part of the tax credit carry over is fully refundable after five assessment years (including the investment year).

Tax deduction for patent income

The Belgian government has introduced a new tax deduction for companies in relation to specific patent income. The deduction is designed to stimulate technical innovations by Belgian companies through R&D activities in relation to patents. In principle, it reduces the effective tax rate on patent income to a maximum of 6.8%.

The tax deduction will apply to all Belgian companies and Belgian branches of foreign companies, as well as to the following types of income:

- Income derived from the licensing of patents by a Belgian company or branch;

- Income derived from the use of patents in the production of patented products by a Belgian company or branch or on its behalf.

The above-mentioned patents should be developed in R&D centres in Belgium or abroad or involve patents obtained or licensed from third parties, provided the patented products or processes are further developed by R&D centres in Belgium or abroad.

The deduction in respect of licensed patents will be equal to 80% of the arm's length patent income received. For patents used in the production process, the Belgian company or branch will be able to deduct from its taxable profits an amount equal to 80% of the arm's length royalty the Belgian company or branch would have received had it licensed the patents to unrelated parties.

In the case of patents licensed or acquired from third parties, the basis on which the 80% exemption is applied must be reduced by:

- Any license payments made to third parties and

- Any amortization charges on those patents.

Tax-free investment reserve

Within certain restrictions, companies qualifying for reduced corporate tax rates (certain small and medium-sized enterprises) can build up a tax-free investment reserve amounting to 50% of their taxable results allocated to the reserves, reduced by:

- The tax exempt capital gains on shares;
- 25% of capital gains realized on cars;
- The reduction of share capital compared to the share capital of the previous income year during which a tax-free investment reserve was built up or increased.

Furthermore, there are some other restrictions related to the tax exemption of the investment reserve (e.g. reinvestment requirement, a time limitation, a limit on the amount that may be exempted etc).

Small and medium-sized companies will have to make the choice between the current system of an investment reserve and the notional interest deduction. They will not be allowed to apply both incentives. Companies applying the investment reserve cannot benefit from the notional interest deduction in a two year period following the relevant financial year.

Tax losses carried forward

How are tax losses of a Belgian company treated for tax purposes?

Prior and current year tax losses incurred by a Belgian company can be carried forward without any limits in time and amount in order to offset future taxable income. However, restrictions apply if there is a change in the control of the company, a merger, a contribution or a disallowed transfer pricing.

Depreciation

Depreciation can be applied to formation expenses and to intangible and tangible fixed assets with a limited economic lifetime. It must be taken every year, irrespective of the amount of corporate income, starting from the financial year in which the asset was acquired, produced or received as a contribution.

Which methods of depreciation are available?

Depreciation is calculated on the basis of the acquisition value and the useful life of the asset. Two depreciation methods are applicable: a straight-line method (which is the most commonly used method) and a double declining-balance depreciation method, which is optional.

Under the straight-line depreciation method, the asset is depreciated over its useful economic lifetime based on a fixed percentage of the acquisition value. The double declining balance method takes as a depreciation percentage the double of the straight-line depreciation percentage with a maximum of 40% of the acquisition value. Each subsequent year the depreciation is calculated on the value of the asset at the end of the previous financial year. Once the annual depreciation is lower than it would be under the straight-line depreciation method, the taxpayer can switch back to the straight-line method.

Ruling regime

All taxpayers may request from the tax authorities an "advance ruling," by which the Advance Ruling Commission determines how the tax shall be applied to a particular situation or operation that has not yet taken any effect from a taxation point of view.

The Advance Ruling Commission must acknowledge the receipt of a request for an advance ruling within five working days. In principle, a first meeting must be organized within 15 working days of the receipt of the request for an advance ruling. The law states that the decision regarding the advance ruling should be communicated to the taxpayer within three months of the date of the filing of the ruling request. However, the Advance Ruling Commission and the taxpayer may mutually agree to modify this period. The three-month period is indicative in the sense that no sanctions are provided for if the Advance Ruling Commission does not meet this deadline.

The Advance Ruling Commission must notify the taxpayer regarding its decision in respect of the advance ruling. If the Advance Ruling Commission cannot give a positive ruling, the taxpayer is often invited to withdraw the request to avoid a negative ruling being given.

The Tax Administration is bound by the decision given regarding an advance ruling. However, a taxpayer is not bound by the ruling and does not have to carry out the envisaged transaction or action. In principle, the rulings are valid for a period of five years, but can be renewed. If required, the period of the validity of the ruling may be longer (e.g. a ruling with respect to depreciation of a building).

Capital tax

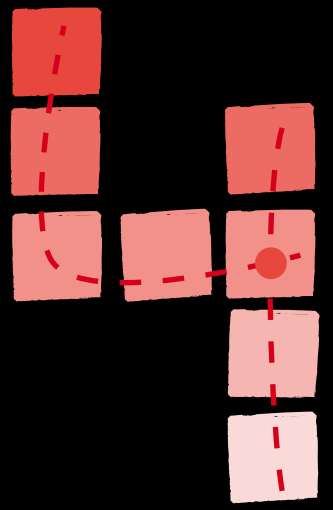
No capital tax is levied on contributions to a company's share capital (upon incorporation and subsequently). The capital tax was abolished because it would have been illogical to introduce measures to stimulate the self-financing of companies by creating a notional interest deduction but continuing to tax the contribution of capital into a company.

Withholding tax exemptions

Obviously, Belgium has implemented the EU Parent-Subsidiary Directive and the Interest and Royalty Directive, resulting in an exemption of withholding tax on dividends paid to EU companies, provided some conditions are met and an exemption of withholding tax on interest paid to related EU companies. Belgium also has an extensive tax treaty network that could substantially reduce the withholding tax on payments to non-EU companies.

In addition to the above, Belgian internal tax legislation provides for some specific exemptions, such as an exemption of withholding tax on interest paid to banks located in the EU or in tax treaty countries and an exemption of withholding tax on interest paid by intra-group finance companies located in Belgium.

Taxation - Corporate 4



General Information

Who is subject to corporate income tax?

Companies, associations and organizations with a legal personality are subject to Belgian corporate income tax if they are engaged in a business or profit-making activity and have their registered office, main establishment or place of effective management in Belgium.

In principle, foreign entities are subject to Belgian non-resident corporate income tax if they carry out business activities in Belgium through a branch (permanent establishment).

What are the corporate income tax rates?

The standard corporate income tax rate is 33.99% (including an austerity surcharge of 3%).

Small and medium-sized companies benefit from a reduced progressive tax rate, provided certain conditions are met (e.g. taxable income does not exceed EUR 322,500 and not more than 50% of the shares in the Belgian company are held by another company).

This rate amounts to:

- 24.25% on income up to EUR 25,000
- 31% on income between EUR 25,001 and EUR 90,000
- 34.5% on income between EUR 90,001 and EUR 322,500

The 3% austerity surcharge still needs to be added to these percentages.

What is the tax base?

In general, the tax base used to calculate corporate income tax is determined on an accrual basis and consists of the worldwide income less allowed deductions (see below).

It is assumed that all income received by a company is, in principle, business income.

As a general rule, business expenses incurred or borne by the company during the taxable period in order to obtain or safeguard taxable business income are considered tax deductible. In order to be deductible, these expenses must be vouched by proper documentation.

Therefore, the income tax base is based on the financial statements of the company with some adjustments, i.e.

- Disallowed expenses;
- Exempt foreign income;
- Dividends-received deduction;

- Notional interest deduction (with effect from the 2007 assessment year - i.e. the financial year ending on or after 31 December 2006);
- Both distributed and retained profits are subject to corporate income tax;
- Tax losses carried forward;
- Investment deduction;
- Patent income deduction (with effect from the 2008 assessment year - i.e. the financial year ending on or after 31 December 2007).

What about capital losses and gains?

In principle, capital losses are deductible for corporate income tax purposes. As an exception to this rule, capital losses on shares are not tax deductible unless, and provided that, they occur because of a liquidation and reflect a permanent loss of actually paid-up share capital.

In principle, capital gains are taxable upon realization. As an exception to this rule, realized capital gains on shares are free of taxes (subject to conditions).

With effect from the 2007 assessment year, all capital gains will only be considered on a "net" basis (as opposed to a "gross" basis) for Belgian tax (relief) purposes. Unrealized capital gains (e.g. gains that are merely expressed in the accounts) can be temporarily exempted from taxes, subject to conditions.

The taxation of capital gains realized on tangible fixed assets or intangible fixed assets that have been depreciated for tax purposes and been held for more than 5 years prior to disposal can be deferred, provided the full proceeds are in due time reinvested in new or second-hand depreciable tangible or intangible fixed assets that are used for a business activity in Belgium. Where reinvestment occurs, taxation of the capital gains is spread over the depreciation period of the assets during which the realization proceeds are reinvested. For reinvestments in buildings, ships or aircraft, the reinvestment period is five years. In all other cases, the reinvestment period is three years.

What fiscal corrections increase the tax base?

Disallowed expenses

Expenses are mainly disallowed if and to the extent that:

- They are not vouched by proper documentation;
- Their deductibility is limited for tax purposes (e.g. car costs, restaurant and reception costs, social benefits);
- They are deemed excessive (not at arm's length).

Non-deductible expenses are added back to the tax base, but can generally be offset by any tax losses for instance.

Timing difference

Certain accounted costs (e.g. likely liabilities and charges) can be temporarily disallowed from a tax point of view (e.g. where they are not specific), thereby increasing the tax base. If and insofar as the conditions for deducting such costs are met at a later stage, the tax base is reduced accordingly.

What fiscal corrections lower the tax base?

Exempt foreign income

In principle, if a Belgian tax-resident company derives income from a foreign branch, it will be exempt from Belgian tax if the branch is located in a country with which Belgium has a double taxation treaty.

Dividends-received deduction

Dividends received by Belgian tax-resident companies or permanent establishments of non-resident companies from holdings in resident or non-resident companies are 95% exempt from corporate income tax, provided the following (simplified) requirements are fulfilled:

- Holding of 10% or a minimum acquisition price of EUR 1,200,000 or more;
- The shares must qualify as financial assets;
- The beneficiary of the dividend must have had full legal ownership of the underlying shares for an uninterrupted period of at least one year before the dividend distribution or must

commit to holding them for a minimum period of one year;
- Taxation condition: dividends from companies not resident in a country whose common tax regime is considerably more favourable than the Belgian tax regime (as a general rule, less than 15% (effective) taxation). The common tax regimes of the Member States of the European Union are deemed to fulfil this requirement.

It should be noted that some exceptions to these rules apply to finance companies, treasury companies, investment companies, intermediaries and companies deriving income from branches located in a country whose common tax regime is considerably more favourable than Belgium's.

Notional interest deduction

With effect from the 2007 assessment year, Belgian tax-resident companies and Belgian branches of non resident companies can claim a tax deduction for their cost of capital by deducting notional interest at a rate calculated on the aggregate amount of their equity including retained earnings.

The purpose of this innovative measure is to put an end to the discrimination between companies that attract equity financing vis-à-vis those attracting debt financing, by allowing a notional interest deduction in the case of equity financing.

Only in a limited number of cases is the deduction not available, i.e. in the circumstances outlined below where the taxpayers in question are subject to a Belgian tax regime that deviates from the common Belgian tax regime:

- Belgian Coordination Centers whose licenses are still operating;
- So-called re-conversion companies;
- Open-ended investment companies, closed-ended investment companies and securitization investment companies which, as a general rule, are only taxed on a limited cost-plus basis;
- Certain co-operative participation companies;
- Sea-shipping companies who benefit from the tonnage tax system.

The average interest rate paid on 10-year Belgian Government bonds for 2008 will be used as the basis for the 2010 assessment year. The latter interest rate will then be adjusted annually (with a maximum 1% up or downwards variation in principle) by referring to the average interest rate on 10-year Belgian Government bonds from the previous year, but capped at a maximum of 6.50%. Pursuant to a Royal Decree it will be possible to deviate from the above rules though.

For the 2010 assessment year the notional interest deduction rate is set at 3.8%.

In the event of a company's financial year being longer or shorter than 12 months, the base interest rate is multiplied by the number of days in this financial year and divided by 365. In the case of a newly incorporated company, for which no "last year-end date" is available, the basis for calculation of the notional interest deduction for the first financial year will be determined on the company's equity as per incorporation date.

When determining the basis on which the notional interest deduction is calculated, the company's share capital plus its retained earnings, as determined for Belgian GAAP (Generally Accepted Accounting Principles) purposes and as per the last year-end date, will be taken into account.

Afterwards, certain adjustments are to be made - i.e. the accounting equity as per the last year-end date (or per incorporation date) has to be reduced by the following items, all valued at the same year-end date:

- The fiscal net value of
  - Own shares held by the company;
  - Financial fixed assets qualifying as "participations and other shares";
  - So-called Equity-UCITS, i.e. investment companies whose dividends are eligible for the Belgian participation exemption;
- In the event of the company having foreign permanent establishments (PE), the positive difference between the net book value of assets (other than the above shares which are already excluded from the equity attributable to the foreign PE) and the liabilities (other than equity attributable to the PE);
- In the event of the company having real estate (rights) abroad (which have not yet been excluded even though

they are attributable to a PE whose income is tax-exempt in Belgium as a result of tax treaty protection), the positive difference between the net book value of that real estate and the liabilities (other than equity) attributable thereto;
- The net book value of tangible fixed assets whose corresponding costs unreasonably exceed the needs of the company;
- The book value of any other investment that is not acquired in order to produce a regular income;
- The book value of real estate (rights) used/occupied by either individuals with a director or liquidator mandate in the company or by their spouse or dependent children;
- Re-valuation gains in respect of assets, other than the aforementioned assets, tax credits for R&D and capital subsidies.

Components of the accounting equity are adjusted upwards or downwards on a pro-rata basis in case they change during the course of the financial year. Changes are deemed to have taken place with effect from the first day of the calendar month following the month in which the change took place.

The non-utilized part of the notional interest deduction can be carried-forward for a maximum of 7 years if there is insufficient tax capacity in the year the deduction is claimed. From a tax-technical viewpoint, in the tax return the deduction will be claimed prior to offsetting any carry-forward tax losses. In the event of a purely tax-driven change of control of a company with carry-forward notional interest deduction, the latter will be forfeited. No advance decision (hereafter "ruling") is required for claiming the deduction.

Patent income deduction

The Belgian government has introduced a tax deduction for new patent income, amounting to 80% of the income, thereby resulting in effective taxation of the income at the rate of 6.8%. The new tax measure is aimed at encouraging Belgian companies and establishments to play an active role in patent research and development, as well as patent ownership. The tax deduction applies to new patent income and came into force as from the 2008 tax year, i.e. financial years ending on or after 31 December 2007.

The tax deduction for patent income is to cover:

- Patents or extended patent certificates owned by a Belgian company or establishment as a result of its own patent-development activities (partly or fully) in research and development centers in Belgium or abroad;
- Patents, extended patent certificates or licenses acquired by a Belgian company or establishment provided it has further developed the patented products or processes in the company's research centers in Belgium or abroad.

The Belgian company or establishment can use the patents - owned by it or licensed to it - to manufacture patented products or have them manufactured on its behalf. Alternatively, it can license the patents to other parties.

To benefit from the deduction, the research center should qualify as a so-called "line of business". In essence, it should be an entity or a division of an entity that is capable of operating autonomously.

For patents licensed by the Belgian company or establishment to any party - whether related or unrelated - the tax deduction amounts to 80% of the relevant patent income, insofar as the income does not exceed an arm's length price.

For patents used by the Belgian company or establishment for the manufacture of patented products - manufactured by itself or by a contract manufacturer on its behalf - the tax deduction is to be 80% of the license fee that the Belgian company would have received had it licensed the patents used in the manufacturing process to an unrelated party.

The tax deduction for patent income will be available to all corporate taxpayers in Belgium, in essence all Belgian resident companies and Belgian permanent establishments of non-resident companies.

Additional possibilities to reduce effective tax rate:

- Apply foreign tax credit if actual foreign royalty withholding tax;
- Notional interest deduction.

Tax losses carried forward

Tax losses can be carried forward for an unlimited period of time and be deducted from future profits. However, carry-back of losses is not allowed. The deduction of tax losses is not allowed on abnormal or gratuitous benefits received from a related party or on the separate taxation of secret commissions.

The further use of tax losses may become partly or wholly unavailable where a company is involved in:

- Certain tax-exempt reorganizations such as mergers and divisions (partly unavailable);
- A change of control that does not meet financial or economic needs (totally unavailable).

Specific rules apply in relation to the offsetting of foreign branch losses against Belgian profits by companies with activities abroad. As a general rule, foreign branch tax losses are deductible in the hands of the Belgian head office, but recapture is possible in the case of double use of tax losses.

Increased investment deduction

Companies acquiring new tangible or intangible fixed assets used in Belgium for environmentally friendly investments in research and development, energy-saving investments and patents and investments relating to security equipment can, subject to conditions, claim an additional deduction from their taxable profit equivalent to a basic percentage of the acquisition or investment value of those investments.

Rates for the 2010 assessment year:

- Basic rate: 0% (or 3% for investments contributing to the recycling of packaging);
- Deduction for patents, R&D and energy-saving investments: 15.5%;
- Staggered deduction for R&D: 22.5%;
- Safety and security investments: 22.5% (only for small and medium-sized companies);
- Certain investments in the maritime sector: 30%.

Realized capital gains on shares

Net capital gains on shares are exempt provided that the dividends relating to such shares qualify for the dividends-received deduction at the time the gains are realized. Contrary to the dividends-received deduction, this exemption is granted regardless of the percentage or value of the holding, the period for which it is held or its classification for Belgian GAAP accounting purposes.

In certain cases, capital gains on shares are only exempt insofar as they exceed previously deducted capital losses on those shares (since 1991 capital losses on shares are no longer tax deductible).

What are the withholding taxes on dividends, interest and royalties?

Dividends

In principle, dividends distributed by a Belgian company are subject to a Belgian domestic withholding tax of 25% (a reduced rate of 15% is possible provided certain conditions are met).

Based on the implementation of the EU Parent-Subsidiary Directive of 23 July 1990 in Belgian tax law, in principle a withholding tax exemption applies to dividends distributed by a Belgian tax-resident company if the recipient company:

- Is established in Belgium or another EU Member State;
- Has a direct holding of at least 10% in the capital of the Belgian distributing company (as of 1 January 2009);
- Maintains this holding for an uninterrupted period of at least one year or commits to holding it for a minimum period of one year;
- The companies are incorporated in the appropriate legal form (in a cross-border context).

Belgium abolished dividend withholding tax for dividends paid to corporate shareholders in Treaty Countries. The exemption is available provided the beneficiary of the dividends meets the following conditions:

- It is a corporation that is resident in a Treaty Country;
- It holds a participation of at least 10% in the Belgian company during an uninterrupted period of 12 months;

- It is normally subject to tax in its country of residence;
- It has a legal form that is similar to the legal forms enumerated in the EU Parent-Subsidiary Directive;
- Belgium and the country in which the recipient company is established have concluded a double tax treaty that provides for a sufficient exchange of information.

Currently, Belgium has tax treaties with more than 85 countries.

Minor formalities have to be observed.

Interest

In principle, interest payments are subject to a Belgian domestic withholding tax of 15%. Belgian domestic law provides for numerous exemptions - e.g. interest income on Belgian registered bonds paid to non-residents is exempt from withholding taxes.

Under the Belgian tax statute implementing the EU Interest and Royalties Directive, in principle, a withholding tax exemption is available on interest or royalty payments between two associated companies, provided they are both regarded as established in the EU and meet the following conditions:

- One of the two companies has had a direct or indirect holding of at least 25% in the capital of the other for an uninterrupted period of at least 12 months;
- A third EU tax-resident company has had a direct or indirect holding of at least 25% in the capital of each of the companies for an uninterrupted period of at least 12 months;
- Where the holding has not been held for a minimum of 12 months at the time the payment is made, the company concerned must undertake to observe the 12-month period;
- The companies are incorporated in the appropriate legal form (in a cross-border context).

Minor formalities have to be observed.

Royalties

Belgian domestic tax law defines royalties very broadly as "income derived from the letting, use or concession of movable goods". The Belgian tax authorities consider a "concession" as any agreement under which a right is granted (in exchange for valuable consideration) to use or exploit a tangible or intangible asset, provided no legal ownership therein is transferred.

In principle, this type of income is subject to a 15% withholding tax unless an exemption applies (i.e. no withholding tax is due if the recipient is a Belgian company).

In the event of a cross-border payment of royalties, the withholding tax rate may be reduced if a double taxation treaty applies (with a lower withholding tax rate on royalties, e.g. the Belgian-US tax treaty provides for a 0% withholding tax) or on the basis of the implementation in Belgian tax law of the EU Interest and Royalties Directive (see above: interest). Minor formalities have to be observed.

Note that exemptions similar to those under the EU Parent-Subsidiary Directive and the EU Interest and Royalties Directive are available in relation to Switzerland.

What about the deductibility of royalties and interest?

Paid royalties and interest are subject to the main principles governing the deductibility of expenses. Strictly speaking, there is no thin-capitalization rule or "earnings-stripping rule" applying to paid interest or royalties.

However, Belgian anti-abuse measures may apply in the following cases:

- Interest or royalty payments between two related parties at a rate that cannot be considered to be at arm's length;
- Interest or royalties paid to a resident of a tax-haven country (with a tax regime significantly more favourable than the Belgian regime), unless it is demonstrated that the payment is at arm's length and corresponds to genuine transactions;
- Interest payments in respect of loans are disallowed for Belgian tax purposes if the beneficiary of the interest is not subject to income tax or if the interest is subject to an advantageous income tax regime compared to the Belgian income tax regime for interest received and insofar as the total amount of the loans, other than bonds and similar securities that are publicly issued, exceeds seven times the amount of the Belgian-resident company's taxed reserves

(at the beginning of its financial year) plus paid-up capital (at the year-end).

Can dividends be deducted?

Payments that qualify as a dividend from a Belgian tax point of view cannot be deducted.

Tax Treaties

What are "Tax Treaties" and how do they benefit foreign investors?

Belgium has entered into various agreements with foreign jurisdictions designed to avoid and eliminate double taxation. For instance, Belgium has entered into a double taxation agreement with Hong Kong, facilitating the use of Belgium as a gateway to business with Asia as it provides for a 0% dividend withholding tax rate. The Belgian-Macao tax treaty provides for a 0% dividend withholding tax rate. The Belgian-USA tax treaty also provides for a 0% dividend withholding tax rate.

The primary purpose of double taxation treaties is to allocate the taxing rights on income arising from international transactions between the countries involved and to limit local taxation and grant tax relief to avoid/mitigate double taxation. Most of these treaties are based upon the OECD Model Double Taxation Convention on Income and on Capital.

Which countries have a tax treaty with Belgium?

See www.flandersinvestmentandtrade.com

Transfer Pricing

What are the rules governing transfer pricing?

The concept of transfer pricing is based on the rule that companies in the same business group must perform their business transactions "at arm's length." This means that a company must be able to demonstrate that the prices at which it trades with affiliated companies are comparable to the prices and terms that would prevail in similar transactions between unrelated parties.

What are the tax implications of not adhering to the "arm's length" principle?

If a Belgian tax-resident company or a Belgian branch is found not to have transacted business "at arm's length", the Belgian tax authorities can, subject to conditions:

- Add to its tax base the advantage granted to an affiliated company;
- Challenge the deductibility of tax losses (or other deductions) up to the amount of abnormal or gratuitous benefits received from an affiliated company.

In practice, whether a company has engaged in improper transfer pricing depends on the facts and circumstances of the transaction in question.

How can a company ensure that its transfer pricing practices are acceptable?

The Belgian tax authorities recommend that taxpayers maintain documentation supporting their transfer pricing policy. This documentation must be relevant, comprehensive and reliable.

Furthermore, taxpayers and prospective investors can apply for a unilateral or bi- or multilateral advance transfer pricing agreement or ruling from the federal tax authorities in respect of the "arm's length" nature of a pricing arrangement.

What factors do the federal tax authorities consider when determining whether the documentation evidencing an "arm's length" transaction is relevant, comprehensive and reliable?

The federal tax authorities have adopted the transfer pricing guidelines published by the OECD. These guidelines indicate that taxpayers should prepare and retain documentation identifying:

- The legal structure and activities of the group;
- The nature, terms (including prices) and quantities of the relevant transactions;
- The "arm's length" nature of the prices charged. The company must be able to demonstrate that the prices at which it trades with related parties are comparable to those at which it trades with independent parties.

Domestic Dividend Withholding Tax Exemption

What is the new domestic dividend withholding tax exemption?

The new domestic dividend withholding tax exemption:

- extends the EU Parent-Subsidiary Directive between the 25 EU-countries and Switzerland to all countries worldwide that have a double tax treaty with Belgium.

What is the scope of application?

Are eligible for the domestic dividend withholding tax exemption, any corporate shareholder who:

- is a resident of a treaty country;
- holds at least a 10% participation in its Belgian subsidiary for a consecutive period of at least 12 months. *

*For Switzerland, the minimum participation requirement remains 25% for an uninterrupted period of 2 years.

The parent company as well as the Belgian subsidiary must:

- have a legal form as listed in the appendix to the Parent-Subsidiary Directive; or
- be a company established under Belgian Law and subject to corporate income tax; and
- have its head office, corporate headquarters or administrative seat in Belgium.

How does it work?

Using Flanders as their holding location for investments in Europe allows corporate investors from treaty countries to repatriate European profits without paying dividend withholding tax and without a limitation on benefits.

Dividends paid to corporate shareholders by a holding company domiciled in Flanders are exempt from withholding tax under this new exemption, whereas capital gains on shares realized by this holding company are in principle exempt from corporate income tax. This makes Belgium, and Flanders as a region, an attractive holding company location.

Branch vs Subsidiary

Taxation of branches

What are the main tax advantages in establishing a branch of a foreign company as a European headquarters?

A branch is considered to be the same legal entity as the foreign company to which it belongs. Consequently, there are certain tax advantages in establishing a branch, such as:

- There is no dividend withholding tax or any other type of "branch level" tax upon the transfer of branch profits to the foreign company;
- Belgian branches of foreign companies are also granted a notional interest deduction (of 4.473% for the 2010 assessment year) on the amounts durably made available to them.

Are there any negative tax implications to establishing a branch?

In principle, a Belgian branch is treated in the same way as a Belgian tax resident company. The fact that a Belgian branch is considered to be part of the same legal entity as the foreign company has the following disadvantages:

- In principle, the tax deduction of payments made by the branch to its foreign head office (e.g. interest, royalties, management fees etc) is disallowed in the case of pure in-house transactions (no disbursements to third parties);
- No per se application of the Belgian tax treaty network. In principle, the tax treaties of the state of residence of the foreign company apply;
- No per se application of the EU Parent-Subsidiary Directive or EU Interest and Royalty Directive if the foreign company is a non-EU tax resident company.

Taxation of subsidiaries

What are the main tax advantages of establishing a subsidiary of a foreign company as a European headquarters?

Please note that with effect from 2006, the 0.5% registration duties on capital contributions have been abolished.

The main tax advantages in establishing a subsidiary are:

- Leveraging through interest, royalties or management fees paid to, amongst others, the parent company;
- Application of the extensive Belgian tax treaty network;
- Most common types of Belgian companies qualify as a parent company or subsidiary under the application of the EU Parent-Subsidiary Directive or the EU Interest and Royalty Directive. Consequently, a withholding tax exemption on dividends distributed or interest/royalties paid by a Belgian company to another qualifying EU tax resident company may be available.

Belgian Ruling System

General

Belgium is one of the few countries to have a Ruling Practice based on specific legal provisions that can be considered one of the major drivers to obtain upfront legal certainty for taxpayers.

The main principles of the ruling system are as follows:

- Ruling on almost all tax topics;
- Case-by-case ruling in a new open culture;
- Legal certainty in advance for investors;
- Compliance with international regulations;
- Application to both potential and actual investors;
- In principle valid for five years, but deviations possible if motivated;
- Substance required;
- Possibility of unilateral, bi- or multilateral rulings.

Since 1 January 2005 a new independent and well-staffed Central Ruling Office has been operational. The Office can be reached via email at dvbsda@minfin.fed.be or by telephone on +32 (0) 2 579 38 00. It has its website at www.ruling.be (available in Dutch and French).

The ruling practice has proved successful with more than one request being received a day. The Ruling Office works in a constructive business-like style. For example, they accept pre-filing meetings even on a no-name basis and meetings can even be conducted in English. On average, rulings are delivered within 3 months after the request has been lodged.

In addition, the Tax Administration has been reformed to provide customer-focused services to the public through the establishment of a helpdesk for foreign investors. The helpdesk can be contacted via taxinvest@minfin.fed.be

Rulings can be obtained on issues related to all federal taxes and regional taxes collected centrally such as:

- Corporate Tax;
- Individual Income Tax;
- VAT;
- Customs;
- Capital duties.

Issues that can be covered by Rulings are :

- Transfer pricing;
- Depreciation and provisions;
- Deductible expenses;
- Participation exemption of dividends;
- Qualification as a permanent establishment;
- Tax transparency;
- Reorganizations;
- Proper costs to the employer;
- "Tonnage" tax rulings renewable every 10 years:

  - An advance tax ruling can be requested to determine the lump-sum taxable profits resulting from the operation of sea-going ships (including ship management on behalf of third parties) and any 'related' operations;

- Downwards adjustment of taxable profits:

  - Belgium has introduced a new section in its tax legislation, on the basis of which Belgium will refrain from taxing the profits that a Belgian company would not have realized if it had not been part of related party dealings. Because the cost structure (or the profit potential) of a member of a multinational group of companies will normally be different from that of a stand-alone entity, its profit will also normally be higher. This profit differential, which does not result from the functions performed and risks assumed by the respective entity, should, on the basis of the "arms length" principle, not be allotted to the Belgian group member. Consequently, the new section allows

for a unilateral adjustment of the Belgian taxable basis similar to the corresponding adjustment of article 9 of the Model Double Taxation Treaty. The underlying assumption is that the 'excess profit' forms part of the profits of the foreign related party. Which part of the profit is deemed to be derived from the related party dealings (and therefore exempted in Belgium) will need to be agreed in advance with the Belgian Ruling Office.

Advance rulings are published in summary format on a no-name basis (on the website www.fisconet.be). Some so-called general rulings or standpoints of the ruling commission can be consulted on the website www.ruling.be

How can the new ruling system be applied to a shared service center or a distribution center?

The transfer price of a shared service center/distribution center can be ruled on a cost-plus base. Depending on the facts and circumstances, certain costs such as disbursements can be excluded from this cost-plus base.

In addition, rulings could be applied to other areas such as Customs and VAT. For example:

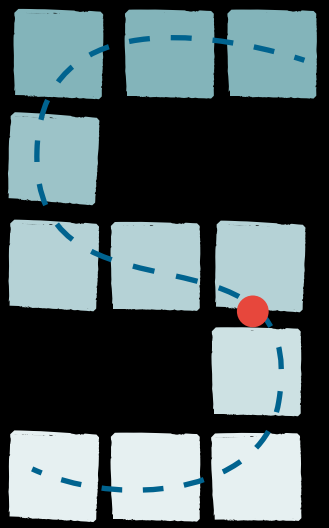
- Ruling on the exclusion of certain costs from the customs value of imported goods e.g.
  - Royalty payments;
  - Buying commissions;
  - Late payment interest;
- Rulings on Binding Tariff Information (BTI) and/or Binding Origin Information (BOI), which give certainty to importers concerning the classification of goods and the possible use of preferential tariff rates.

Further application of the Ruling

The new Belgian ruling system can be used to develop - with legal certainty - new business strategies which may offer substantial advantages compared to those previously offered by, for example, informal capital rulings, shared service/distribution centers or even coordination centers. The new ruling system operates on a case-by-case basis within the framework of EU legislation.

Taxation - VAT

5



Value Added Tax (VAT) is a tax charged on the private and public consumption of goods and services. It is levied at all stages in the production and distribution chain and paid to the state on the basis of the value added at each stage, hence the name "value added tax". In general, VAT must be paid by taxable persons. In principle, every such person charges VAT on its sales and is (in principle) entitled to deduct from this amount the VAT paid on his purchases. Ultimately, the tax is borne by the "final consumer", who cannot deduct VAT paid on purchases.

VAT was introduced in Belgium in 1971 and, in the three languages of the country, is called "Belasting over de Toegevoegde Waarde (btw)", "Taxe sur la Valeur Ajoutée (TVA)", and "Mehrwertsteuer (Mwst)".

The tax is charged on most supplies of goods or services performed in Belgium. It is also charged on goods imported from countries outside the European Union, on goods coming into Belgium from other EU Member States and on some services purchased abroad.

Who must register for VAT?

No VAT registration threshold exists in Belgium for non-established taxable persons.

A taxable person is any person who, in the exercise of an economic activity in a regular and independent manner, with or without a profit motive, on a principal or accessory basis, supplies goods or services for consideration, irrespective of the place where the economic activity is exercised.

The place of establishment is not a criterion in VAT registration. What matters is that the taxable person performs transactions that make Belgian VAT become due by the person. However several derogations apply to this general rule. Furthermore as to the introduction of the VAT package, all Belgian established taxable persons are liable to register for VAT purposes to the extent that they perform services which are located in another EU Member State for which the client is the debtor of the VAT according to the general reverse charge mechanism.

As to non-established taxable persons, Belgian VAT Law provides for an extensive reverse charge mechanism (i.e.

whereby the customer, who is either established in Belgium and liable to file periodical Belgian VAT returns or identified for VAT via an individual VAT representative, must account for the VAT in Belgium, and not the supplier, who is not established in Belgium), which facilitates companies that want to do business in Belgium without having to register for VAT there. In cases where the customer must account for the VAT on the transaction, the supplier does not have to register for VAT. However under certain conditions the supplier can opt to do so.

Furthermore, there is a different registration procedure for persons established for VAT purposes in Belgium and persons not established for VAT purposes in Belgium.

Established taxable persons

Established taxable persons must register with the local VAT Control Office relevant to the place in which the business is established.

Non-established taxable persons

Non-established taxable persons must register with the "Central VAT office for foreign entrepreneurs".

Non-established taxable persons established in another EU Member State can directly register for VAT purposes (i.e. without the appointment of a VAT representative). Non-established taxable persons established outside the EU must appoint a VAT representative. There are two kinds of VAT representation in Belgium:

1. The individual VAT representative who can be appointed for all taxable transactions a non-established taxable person carries out in Belgium;
2. The global or simplified VAT representative who can be appointed only for a limited number of defined transactions. Belgium has two kinds of simplified tax representatives:

a) A simplified tax representative acting under a VAT number starting with BE 796.5 can be used when the only activity of the non-established taxable person is importing goods into Belgium followed by a supply of the same goods.
b) A simplified tax representative acting under a VAT number starting with BE 796.6 where

- Goods are put into a VAT warehouse, or
- Goods are retrieved from a VAT warehouse, or
- An intra-Community acquisition of goods is followed by an exportation or a (deemed) intra-Community supply of the same goods, or
- An intra-Community acquisition of goods is not followed by a subsequent transaction subject to VAT in Belgium.
-

It is not possible to combine the functions of individual and simplified VAT representative. For non-established taxable persons established in another EU Member State, the appointment of a VAT representative is optional. This option can, in certain circumstances, be beneficial because it allows some suppliers to invoice non-established EU taxable persons without VAT, thereby avoiding the pre-financing of VAT (i.e. application of reverse charge).

A VAT representative is jointly liable for all VAT related debts of the non-established taxable persons. A guarantee (in practice, a bank guarantee) must, in principle, be provided to the Belgian Treasury.

VAT group

With effect from 1 April 2007, Belgium adopted the VAT group system, which enables independent Belgian established legal entities to be treated as a single VAT taxable person (i.e. a VAT group) if they are closely bound by financial, economic and organizational links.

The benefit of a VAT group is that for VAT no transactions are deemed to take place between the entities that belong to the same VAT group. This is likely to have a positive influence on the cash flow position of the group members. For mixed taxable persons (who only have a limited right to deduct input VAT), a VAT group may even reduce the volume of irrecoverable VAT which is created by outsourcing activities. Finally, a VAT group reduces the number of compliance obligations. For example, only a consolidated VAT return should be filed for all members of the VAT group, who no longer have to file individual returns.

Belgian VAT numbers

With effect from 1 January 2008, the mandatory structure of a Belgian VAT number is: BE X999 999 999. For numbers

existing before that date, the X is replaced by a 0. For new numbers attributed with effect from 1 January 2008, the X has been replaced by a 1. Enterprises benefiting from the special scheme for small undertakings do not receive a VAT number with the prefix BE except in some specific circumstances (e.g. intra-Community acquisition of goods).

What are the VAT rates?

The standard VAT rate is 21%. There are three reduced rates:

A reduced VAT rate of 0% (exemption with input tax credit) applies to, amongst other things, newspapers, journals and magazines of general interest, issued at least 48 times a year, and recovered goods or products.

A reduced VAT rate of 12% applies to supplies of goods and services such as phyto-pharmaceutical products, margarine, (inner) tubes, pay television, social housing and restaurant services for example.

A reduced VAT rate of 6% applies to supplies of goods and services considered basic necessities (food and pharmaceuticals), newspapers, publications and books (sometimes also zero-rated), works of art, antiques and collector's items, cars for disabled people, goods supplied by social organizations, renovation works on immovable property (under strict conditions), contract farming, passenger transport, the use of cultural, sporting and entertainment venues, copyrights, concerts and exhibitions, hotels and camping facilities, some medical equipment and some social housing.

Exemptions

See www.flandersinvestmentandtrade.com

Time of supply

VAT becomes due at the "time of supply" or "tax point." In Belgium, different time of supply rules apply to goods and services.

Goods

The time of supply for goods is defined as one of the following events:

a) When the goods are put at the disposal of the buyer;
b) If the goods are shipped by the supplier, when the goods arrive at the buyer's premises;
c) If the supplier has to install the goods, when the installation is completed.

Continuous Supply of Goods

For a continuous supply of goods which gives rise to successive statements of account or successive payments, the time of supply is at the end of the period to which such statements of account or payments relate.

Services

The time of supply for services is when the service is completed.

Continuous Supply of Services (ongoing services)

For a continuous supply of services which gives rise to successive statements of account or successive payments, the time of supply is at the end of the period to which such statements of account or payments relate.

For a continuous supply of services over more than one (1) year, which does not give rise to statements / payments during that period, and for which Belgian VAT is due by the recipient of the service according to the new B2B rule, the time of supply will be at the end of each calendar year.

Additional Time of Supply Rules

VAT becomes due in respect of a supply of goods or services before the basic tax point if any of the following take place before the basic time of supply:

a) An invoice is issued;
b) Payment is received.

Said derogation is not applicable for the invoicing of services

subject to the new B2B rules for which VAT is due by the recipient.

Intra-Community Acquisitions

The time of supply for an intra-Community acquisition of goods is the moment of the arrival of the goods in Belgium. VAT becomes due on an intra-Community acquisition of goods on the 15th day of the month following the month in which the acquisition was made. If the supplier issues an invoice for the total amount prior to this date, VAT becomes due when the invoice is issued.

Imported Goods

In principle, when goods are imported into Belgium, VAT is due at the time of importation. However, a company registered for VAT in Belgium can apply for an import license (the so-called ET 14.000 license), as a consequence of which the import VAT no longer has to be paid at the time of importation, but is deferred to the next periodic VAT return. In principle, in the same VAT return, the import VAT can be deducted (this deferral results in a zero-rated operation) and apart from the bank guarantee of 1/24th of the estimated import VAT liability, no pre-financing of import VAT is required.

Furthermore, the Belgian VAT warehousing regime is especially advantageous in that it is a well-developed system that allows all types of goods that are imported into Belgium to be included in the warehouse, as a consequence of which payment of import VAT is suspended. Therefore, the Belgian VAT warehousing regime is a worthy alternative to the ET 14.000 license (especially when goods need to undergo further packaging or other permitted activities before they are delivered to the customer).

A non-established person should register for VAT when:

- A taxable transaction is performed at the time the goods are put into a Belgian VAT warehouse, or
- Goods are retrieved from a Belgian VAT warehouse on the said person's account.
-

Where goods are traded under the VAT warehouse regime no VAT registration is required.

Which VAT is deductible?

In general, the following input VAT is deductible:

VAT is deductible insofar as the goods or services are used for the purposes of:

1. Taxed transactions;
2. Taxable transactions exempt from VAT that provide deduction of input VAT (exempt with credit);
3. Taxable transactions carried out outside Belgium (which would give the right to deduct input VAT if they had been performed in Belgium);
4. Taxable transactions exempt from VAT without credit and mentioned in article 44, §3, 4° to 10° of the Belgian VAT Code (financial and insurance transactions), provided these transactions are performed for a recipient established outside the EU or are directly linked to goods that will be exported to a country outside the EU;
5. Agency services in relation to the transactions mentioned under point 4 above.

In general, the following input VAT is not deductible:

Input VAT on goods and services not used for the purposes mentioned above.

The following operations are specifically denied from input VAT deduction:

- Intra-Community acquisitions or purchases of manufactured tobacco;
- Intra-Community acquisitions or purchases of alcoholic beverages other than those intended for resale or to be provided as part of a supply of services;
- Accommodation, food and beverages for immediate consumption, unless the costs are incurred by:

a) Employees delivering goods or providing services away from the business premises or;
b) Other businesses that in turn supply the same service for consideration;

- Entertainment expenses.

A maximum of 50% of the input tax paid or reverse charged on vehicles used for the carriage of passengers and/or goods is deductible unless it concerns the following vehicles:

a) Vehicles with a maximum capacity of more than 3500 kg (trucks);
b) Vehicles for passenger transport with more than 8 seats (excluding the driver);
c) Vehicles equipped especially for the transport of sick and injured people, prisoners and corpses;
d) Vehicles that, based on technical features, cannot be registered with the department of motor vehicles (e.g. vehicles which can only be used for sports events);
e) Vehicles equipped especially for camping;
f) Vehicles described in Article 4, §2 WIGB (vans);
g) Motorized bicycles and motorcycles;
h) Vehicles for sale by a taxable person whose main economic activity is the sale of vehicles;
i) Vehicles for lease by a taxable person whose main economic activity is the lease of motor vehicles to the general public;
j) Vehicles destined to be used exclusively for paid passenger transport;
k) New vehicles subject to an exempt IC supply. In this case the deduction of VAT is allowed to the extent that VAT would have become due in the case where no exemption applied.

The above restriction also applies to VAT paid or reverse charged on services or goods relating to these vehicles.

Partial Exemption

Input tax directly related to the making of exempt supplies is generally not recoverable. If a taxable person makes both exempt and taxable supplies they are not allowed to fully recover input tax. This situation is referred to as "partial exemption".

In Belgium, the amount of input tax that a partially exempt business may recover can be calculated in one of two ways:

a) The first method is a general pro rata calculation based on the percentage of taxable and exempt turnover (i.e. turnover generating input VAT deduction/total VAT turnover). The recovery percentage is rounded up to the nearest whole number (for example, a recovery percentage of 77.2% is rounded up to 78%).
b) The second method is a two-stage calculation. The first stage identifies the input VAT that can be directly allocated to taxable and to exempt supplies. Input tax directly allocated to taxable supplies is deductible (taking into account the VAT deduction limitation and exclusion rules); input tax directly related to exempt supplies is not deductible. Supplies that are exempt with credit are treated as "taxable supplies" for these purposes. The next stage identifies the amount of the remaining input tax (for example, input tax on general business overheads). The calculation may be performed using the general pro rata calculation based on values of supplies made (or it may be based on a special calculation agreed with the VAT authorities). This is called the "real-use methodology".

Capital Goods

Capital goods are items of capital expenditure that are used in a business over several years. Input tax is fully deducted in the year in which the goods are acquired. However, the amount of input tax recovered for capital goods must be adjusted over time if the taxable person's recovery position changes during the adjustment period, or when the use of the capital goods changes.

In Belgium, the capital goods adjustment applies to the following assets for the number of years indicated:

a) Immovable goods, buildings (adjusted for a period of 15 years);
b) Other movable capital assets (adjusted for a period of 5 years).

The adjustment is applied each year following the year of acquisition to a fraction of the total input tax (1/15th for land and buildings and 1/5th for other movable capital assets). The adjustment may result in either an increase or a decrease in deductible input VAT.

With effect from 7 January 2007, the same rules apply equally to services with the same characteristics as the aforementioned capital investment goods (provided they are depreciated over a time period of a minimum of 5 years). The adjustment period for such services is 5 years.

Refund of VAT to non-registered foreign taxable persons

Non-established taxable persons can request a refund of Belgian VAT to the extent that they are not obliged to register for VAT purposes in Belgium (in the latter case input VAT must be reported in the Belgian VAT return). As to the refund of Belgian VAT incurred by a non-established taxable person a distinction is to be made between a taxable person established in or outside the EU.

Taxable persons established in the EU - 8th Directive refund claim

The taxable person has to submit an electronic refund application via the electronic portal set up by its Member State of establishment. Said application has to contain information regarding the company (such as name, address, VAT identification number, bank account details, etc.) and regarding the invoices/ import documents (such as name and address of supplier; date and number; taxable amount and VAT amount, etc.).

The underlying invoices/import documents are not to be provided. However, the Member State of refund (Belgium) may require the taxable person to submit by electronic means a copy of the invoice or import document where the taxable basis is EUR 1.000 or more (for fuel EUR 250).

The refund period shall not be more than one calendar year or less than three calendar months. Refund applications may however relate to a period of less than three months where the period represents the remainder of a calendar year.

The minimum limits for the claims are:

- EUR 400 (for a refund period less than one calendar year but not less than three months);
- EUR 50 (for a refund period of a calendar year or the remainder of a calendar year)

The refund application is to be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. The application shall be considered as submitted only if the taxable person has filed all the required information. The Member State of establishment shall send the taxable person an electronic confirmation of receipt and forward the application to the Member State of refund (Belgium). The Member State of refund (Belgium) shall notify the taxable person, by electronic means, of the date on which it received the application. The latter shall also notify the taxable person of its decision to approve or refuse the application within four months of its reception. Refunds of approved amounts are to be paid within 10 working days. If not, interests shall be due.

Insofar as the Member State of refund considers that it does not have all the relevant information on which to make a decision, it may request additional information within the four-month period referred to above. Said (additional) information is to be provided within one month of the date on which the request reached the person to whom it is addressed. In a straightforward case the Member State of refund shall notify the taxable person of its decision within two months of receiving the requested information. However, the period available for the decision will always be at least six months from the date of receipt of the application by the Member State of refund (eight months in case further additional information is requested).

Taxable persons established outside the EU - 13th Directive refund claim.

The claim must be made by filing a refund application form in triplicate (in either Dutch, French or German). The form must be submitted to the Central VAT Office for Foreign Taxpayers.

Non-EU taxable persons must prove to the Belgian tax authorities that, had they been based in Belgium, their activities would have been subject to VAT.

Original invoices/import documents, bills, vouchers, receipts or customs clearance forms must be submitted along with any claim. The invoices must be in accordance with the requirements of Belgian VAT legislation.

A maximum of one claim can be made per calendar quarter. The minimum limits for claims for businesses are:

- EUR 200 per calendar quarter (or periods less than one year);
- EUR 25 per calendar year (or balance of a year).

Claims for a year must be based on the calendar year ending on 31 December.

The tax authorities must receive the claim within three years from 1 January of the year following the calendar year in which the VAT was incurred.

VAT return

The periodic VAT return covers a calendar month. Taxable persons can opt to file quarterly depending on whether or not supplies exceed the threshold of EUR 1,000,000 (excl. VAT) on a yearly basis. Taxable persons active in the mineral oil, mobile phone, computer or vehicles sector can only apply for this option provided further conditions are met.

Taxable persons who file quarterly VAT returns, will be obliged to file monthly VAT returns insofar as they provide intra-Community supplies of goods for more than EUR 400,000 on a yearly basis. The reference period for this threshold starts on 1 January 2010.

Please note that in certain cases, non-VAT registered persons can become liable to pay VAT (e.g. a life insurance company receiving consultancy services from abroad, a private person importing a car, a city that wants to sell a new building without registration duties etc.). In such cases these persons must notify the Belgian VAT authorities and file special non-periodical VAT returns.
The due date for submitting a VAT return is the 20th of the month after the covered calendar month or quarter. The VAT is due when the return must be filed. Taxable persons who file quarterly must pay an amount in the first and second months of the quarter.

Taxable persons who file monthly must pay an amount at the end of December, for December operations. All payments must be made by bank transfer.

If the business is in a refund situation, the refundable amount is carried forward to the next period. Repayments can be requested each calendar quarter.

Monthly repayments are possible for monthly taxable persons who are performing important zero-rated operations (subject to conditions).

At present, VAT taxable persons have 2 options for filing their periodic VAT returns:

- On paper via the official green document (currently only allowed when the taxable person does not avail of the required IT infrastructure);
- Electronically via the INTERVAT system (filing via the Internet).

Other documents that may have to be filed include:

- A yearly summary statement listing all domestic supplies to businesses that must be VAT registered in Belgium. Electronic filing is mandatory unless the taxable person does not avail of the required IT infrastructure;
- An EU sales list when intra-Community supplies of goods / services are carried out. Electronic filing (INTERVAT) is mandatory unless the taxable person does not avail of the required IT infrastructure;
- Statistical reporting: an Intrastat return for arrivals and dispatches of goods to and from Member States other than Belgium.

Anti-abuse measures

In 2007 the concept of "abuse" was introduced into the Belgian VAT legislation (as a consequence of which, a specific arrangement cannot be implemented when the transactions concerned result in a tax advantage contrary to the purpose of the VAT Code (objective circumstances) and the essential purpose of the transactions is to obtain this tax advantage (subjective circumstances)). Therefore, it is important to clearly document that any new arrangement has genuine economic motives.

VAT package

Belgium has implemented the VAT package as from 1 January 2010.

Some of the key changes introduced in the VAT package are:

- Place of supply/taxation:

The general rule for B2B services will be the place where the customer is established, whereas for B2C services the general

rule remains unchanged, i.e. where the supplier is established. Exceptions to these rules will be introduced and maintained as well (e.g. cultural services, catering services, services connected to immovable property);

- Effective use and enjoyment:

The possibility for Belgium to extend the scope of the "effective use and enjoyment' provision to a wider range of services if double taxation or non-taxation is likely to arise;

- Reverse charge:

The introduction of a general reverse charge mechanism for B2B services where the place of taxation is deemed to be where the customer is established;

- Reporting obligations:

An obligation for the supplier of services to submit summary statements for services supplied to taxable and non-taxable legal persons, where the latter are liable for VAT in their own EU Member State;

- B2C electronically provided services, telecom services and broadcasting services:

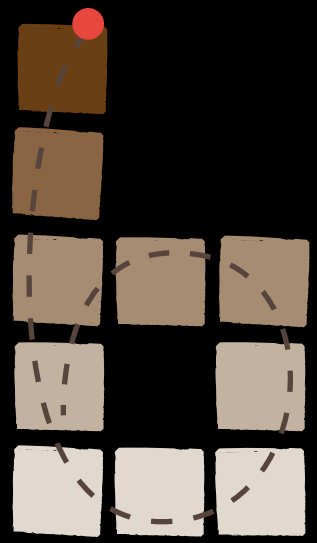
The place of supply will be the place where the customer is established, in the sense that:

i) The provisions applicable to non-EU providers of electronically supplied services (ESS) are extended to telecom services and broadcasting services;
ii) From 2015 ESS, telecom services and broadcasting services supplied by an EU provider to an EU customer will be taxed where the customer is established;

- 8th Directive Refunds:

The electronic submission of requests, the determination of time limits for completing a refund and the provision of interest for overdue refunds.

Personal taxation 6



What are the principles of personal income taxation?

An international employee taking up employment in Belgium will generally become liable for income tax under Belgian law. Other taxes that may apply are property tax and gift and succession duty. In Belgium there is no wealth tax, as such. Capital gains taxes are only levied on private individuals in certain circumstances such as transactions which go beyond the normal management of a private estate, certain sales of property and sales to a company resident outside the European Economic Area of substantial holdings in a Belgian company.

Belgian residents are subject to personal income tax on their total income from all sources. Taxation on a sliding scale is applied to successive portions of net taxable income. Rates in 2009 vary between 25% and 50%. Residents also pay additional municipal taxes at rates that vary between 0% and 9.5% of the total income tax payable.

Non-residents are subject to personal income tax on Belgian source income only, namely on Belgian source professional income, on property income located in Belgium and on Belgian source investment income (i.e. interest and dividends paid by a Belgian company). Non-residents have to pay additional taxes at a rate of 7% of the total income tax payable.

Certain expatriates who satisfy conditions outlined below are considered fiscally as "non-resident" and come under a special taxation regime.

The Belgian tax year runs from 1 January to 31 December. Where an individual is taxable in Belgium for only part of a calendar year, his/her income in that period is treated as if it were income relating to a full calendar year. There is no pro-rata restriction of allowances or grossing up of income on an annual basis.

How is personal income tax calculated?

Personal income tax is calculated by determining the taxable base and by assessing the tax due on that base.

In determining the taxable base, compulsory social security contributions paid either in Belgium or abroad are fully tax deductible. Professional expenses can be claimed either

on an actual basis (through the production of supporting documentation) or on a lump sum basis where currently the maximum deductible amount is EUR 3,540.00 on a gross taxable salary of EUR 59,614 [accounts for the 2009 tax year (2010 tax return)]. Personal income tax is calculated on the taxable base after allowing for part of that base to be exempt from tax by applying a number of reductions related to marital status, the number of dependent family members and other circumstances. Some tax reductions might also apply. However, no personal tax exemptions or notional transfer of earnings to spouses will be granted to non-resident taxpayers (see below), unless they either earn at least 75% of their worldwide professional income in Belgium or retain residence in Belgium for the entire taxable period. According to the authorities, a married taxpayer's abode is held to be where the taxpayer lives with his or her spouse. However, there are some exceptions to this rule.

Taxation on the husband's and wife's earnings is calculated separately. Subject to certain conditions being fulfilled, part of the professional income earned by one spouse may be transferred to the other spouse, either because the latter assisted the former in earning income or because the latter's income is substantially lower. Although couples are taxed separately on earnings, assessments continue to be issued in joint names. However, a married non-resident will be assessed as a single person if his spouse is not subject to Belgian income tax and earns exempt or foreign professional income exceeding EUR 9,280.00.

Local property tax (précompte immobilier or onroerende voorheffing) is assessed on "cadastral income" (i.e. on the deemed rental value attributed by the authorities to the property). Some allowances are made for occupancy. Property tax is levied at a rate that varies according to the municipality and to the location of the property. Rates generally vary between 20% and 50% of "cadastral income".

How does Belgian tax law treat stock options?

On 26 March 1999 the Belgian Parliament adopted a new tax law with regard to stock options. With this new law, Belgium intended to stimulate the granting of stock options as an "employee benefit" and remove any doubts about the taxable basis and moment of assessment.

Stock options attributed as of 1 January 1999 are taxable on the 60th day following the offer of the options (i.e. the date of attribution). In principle, no further tax is due on the spread at exercise or later when the shares are subsequently sold.

The law of 26 March 1999 was amended by the law of 24 December 2002. Prior to the amendment, stock options were taxable on the 60th day following the date of offer notification, unless the beneficiary had refused the option offer in a written notification to the grantor by that 60th day. Since the amendment, stock options that are offered as from 10 January 2003 are taxable on the 60th day following the written and dated offer notification, provided that the beneficiary has accepted the option offer in writing by that 60th day at the latest. If the beneficiary has not accepted the offer in writing by the above-mentioned 60th day, he/she will be deemed to have refused the stock option offer from a Belgian tax viewpoint.

For publicly traded options, the taxable amount is determined on the basis of the last closing stock option quote on the stock exchange prior to the offer date, reduced by the acquisition price, if any, paid by the beneficiary.

For non-publicly traded options, the taxable benefit is the sum of the taxable time value and of the discount at grant, if any. This taxable benefit is reduced by the acquisition price, if any, paid by the beneficiary.

The taxable time value is calculated on a lump-sum basis by applying a percentage to the fair market value of the underlying shares at the time of the offer. The standard percentage is 15% for an option with a five year lifetime. For options with a life of more than five years, the value will be increased by 1% for each year or part thereof in addition to the five years. For instance, for a stock option with a ten year lifetime the taxable time value of the option is determined to be 20% of the value of the underlying stock at offer date.

However, the taxable time value is reduced to half (i.e. will be calculated at 7.5% + 0.5% per year) instead of 15% (+ 1% per year) of the market value of the underlying shares on the offer date, if the following conditions are fulfilled:

- The exercise price is definitively set at the offer date;
- The option contains the following regulations or the

beneficiary commits himself/herself to the following:

- The option may not be exercised before the end of the third calendar year following the year during which the offer was made, nor may it be exercised after the end of the 10th year following the year during which the offer was made;
- The option may not be transferred (except by reason of death);
- The downside risk of the option (capital loss on the shares) may not be hedged, directly or indirectly, by the person offering the option, nor by a person with whom a relationship of mutual (inter)dependence exists;
- The option relates to shares of the company for whom the beneficiary works or the option relates to shares of a group company that from a Belgian accounting law perspective has a direct or indirect holding in the company for whom the beneficiary works.

The participant will be taxed on an additional benefit in kind in cases where he/she does not abide by his personal commitment. The additional taxable benefit is measured as the difference between the standard 15% (1%) taxable percentage and the 7.5% (0.5%) on which the employee has already paid tax. There are no penalties or late interest applicable.

According to the Belgian tax authorities, this additional benefit in kind is taxable in the income year during which the beneficiary does not abide by his personal commitment.

If the option is "in the money" (i.e. when the exercise price of the option is lower than the fair market value of the underlying stock at the offer date), this discount at grant will be added to the amount determined on the basis of the lump-sum formula to arrive at the full taxable benefit. The discount at grant equals the positive difference between the fair market value of the stock at offer date and the exercise price (after deducting the Belgian employee social security contributions that may apply - see below).

In addition, any certain guaranteed benefit represents additional taxable income for the year during which it has become certain and for the amount exceeding the taxable time value taxed on the 60th day following the offer.

An example of a certain guaranteed benefit would be an option with an exercise price that is a percentage of the value of the underlying share at the time of exercise of the option.

What is the social security regime for stock options?

For stock options attributed from 1 January 1999 social security contributions for salaried persons are in principle assessed on:

- The positive difference, if any, between the fair market value of the stock and the exercise price of the option ("discount");
- Any certain guaranteed benefit under the option agreement, if any.

An employee's potential 13.07% social security charge is deductible for income tax purposes. Appropriate advice should be sought to identify whether all conditions for assessing discounts on social security contributions or any certain guaranteed benefit are met.

There is no social security contribution due on the "taxable time value" of the option or upon the subsequent exercise of the option or sale of the shares other than if a certain guaranteed benefit would then be granted.

What is the special tax regime for foreign executives working in Belgium?

Under certain conditions, foreign executives who are temporarily assigned to work in Belgium within an international group of companies or who have been recruited directly abroad by a Belgian company belonging to such an international group in order to render services in Belgium temporarily, can benefit from special tax status. In this case, they are treated for tax purposes as non-residents of Belgium and taxed on their Belgian-source income only.

When is an employee considered an expatriate?

In order to qualify for special tax status, executives must be foreign nationals and carry out exclusive duties that require them to have special knowledge and responsibilities. Foreign researchers and other specialist foreign staff (i.e. individuals who do not necessarily have managerial responsibilities but who are so highly specialized that recruiting such staff in Belgium would be extremely difficult, if not impossible), will generally qualify for special tax status as well.

In order to be considered for special tax status, the expatriate

also has to comply with the following conditions:

- Employment in Belgium must be within a qualifying company (i.e. a local place of business of a foreign company, a Belgian entity belonging to an international group of companies, a control or coordination office for those companies that render services within the international group or a scientific laboratory or research center belonging to an international group of companies);
- Employment in Belgium must be of a temporary nature;
- Expatriates must qualify as non-residents of Belgium (i.e. their residence or the focus of their economic and personal interests must not be situated in Belgium).

What are the tax benefits of expatriate status?

Apart from the fact that foreign executives benefiting from special tax status are treated for tax purposes as non-residents of Belgium and therefore only taxed on their Belgian-source income, special expatriate tax status (the rules of which are laid down in an Administrative Practice Note of 8 August 1983) also offers two important tax advantages to foreign executives:

- Reimbursements made by the employer to cover the additional expenses incurred as a direct result of the assignment or employment in Belgium are treated as costs proper to the employer which are, within certain limits, non-taxable for the expatriate ("tax-free expatriation allowances");
- The executive benefits from an exemption on the part of his/her compensation that relates to business duties carried out abroad ("travel exclusion").

How is the expatriate tax base calculated?

General principle

As we have already mentioned, having special expatriate tax status means that expatriates are treated as non-residents in Belgium for income tax purposes. As non-residents for tax purposes, they are taxed on:

- Professional income: as a general rule, non-resident executives are taxed on their Belgian-source employment income only. They benefit from special tax reliefs and abatements;
- Real estate: tax is only levied on property located in Belgium;
- Investment income: generally, non-resident executives are not taxed on investment income, unless the income involves dividends or interest paid by a Belgian company. Dividends are generally subject to a tax rate of 25%, interest to a tax rate of 15%.

Determining taxable income from employment

Both the tax-free expatriate allowances and the portion of salary relating to business services rendered abroad are taken out of the expatriate's taxable income from employment. The net taxable employment income after this deduction is then taxed in the same way as the taxable income of a resident of Belgium (i.e. applying the same tax rates and exemptions) and is likewise added to other income from Belgian sources.

Reimbursement of costs proper to the employer (or the company, in the case of directors)

Expenses qualify as expenses or charges proper to the employer if they are paid by the employer in a way that fully relieves the expatriate from the cost either directly (in the form of specific reimbursement) or in the form of lump-sum repayments insofar as the reimbursements are intended to cover the additional cost resulting directly from the expatriate's employment or assignment in Belgium. The reimbursements represent neither salary nor a taxable fringe benefit for the expatriate. Qualifying as an "additional cost" in the above context are the excess charges and expenses expatriates have to sustain as a direct result of living in Belgium over and above the charges and expenses that they would have if they worked in their home country. It is for the employer to demonstrate that the reimbursements correspond to the actual amount of the additional cost and have served the purpose pursued, which is to provide compensation to the expatriate for any expenses and losses that do not unreasonably exceed the expatriate's needs. These non-taxable allowances include once-only expenses such as expenses caused by the expatriate's move to Belgium, the expense of making a dwelling in Belgium fit to live in and expenses caused by the expatriate's move from Belgium

to another country. They also include regularly recurring expenses such as the difference in the cost of housing and cost of living between Belgium and the expatriate's home country, expenses relating to education for children at primary or secondary school levels, the cost of one annual home leave for the expatriate and his/her family members (flight expenses are reimbursed assuming that travel is in economy class), any losses incurred as a result of not finding any tenants for the residence in the home country or having to let it at a price below the normal rental value, any travel expenses caused by exceptional circumstances (such as the death or serious illness of close relatives of the expatriate or his/her spouse), exchange rate differences, the tax equalization allowance, travel expenses of children studying abroad (limited to two trips a year to visit their parents).

The costs proper to the employer (i.e. the tax-free expatriate allowances) will be calculated differently, depending on whether the expatriate receives his/her pay plus a number of separate, clearly identifiable, expense repayments or a gross pay package in which the expense allowance is already included. The first category comprises expatriates who receive a defined amount of net pay, those who receive a base salary net of hypo tax ("hypothetical tax") in their home country ("tax equalized") and those who benefit from protection against excess tax compared to their home country tax ("tax protected"). With regard to expatriates who receive a gross pay package without distinction between the part intended as compensation for the employment activity and the part intended to cover the additional cost directly resulting from the expatriate's employment or assignment in Belgium, the employer may calculate the additional cost in accordance with guidelines issued by the Tax Office (i.e. the "technical note"). Separate from education fees and the aforementioned once-only expenses (for which proper justification must be given and which must appear reasonable), the other expenses (to be properly justified as well) are considered reasonable only insofar as they do not exceed:

- EUR 11,250.00 for executives of operating companies;
- EUR 29,750.00 for executives of control and coordination offices, scientific research centers and laboratories.

Income relating to business duties performed abroad ("travel exclusion")

After taking out the allowances that qualify as a repayment of costs proper to the employer, the total compensation must be divided into one part relating to duties carried out in Belgium and another part relating to duties carried out abroad.

The part that relates to duties carried out abroad is left out of the executive's taxable compensation and is thus exempted from Belgian tax.
In the absence of further information, the authorities assume that the executive is compensated in the same way for duties carried out abroad as for duties carried out in Belgium. This means that taxable income is calculated by multiplying total annual compensation by a fraction whose numerator is the number of days of the year worked in Belgium and whose denominator is the total number of days worked in Belgium and abroad in the same year or in the relevant period of the year.

The executive must prove the number of days worked abroad. In the absence of any documented evidence, the travel exclusion may be reduced proportionately to the number of days for which the executive cannot produce any supporting documentation.

In this respect, the executive must provide double proof by means of a set of evidence and documents that are reliable and sufficiently convincing for the Tax Office that:

- The said days really were spent abroad;
- The said days were dedicated to performing business duties.

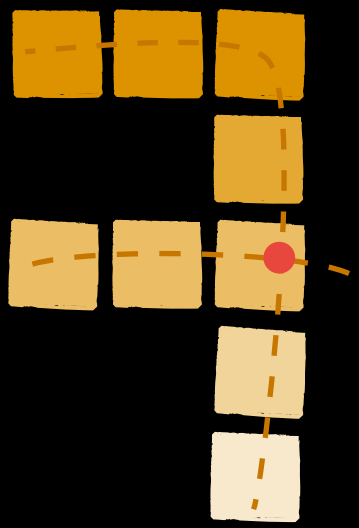
What are the formalities in applying for expatriate tax status?

The formalities to be followed in order to benefit from special expatriate tax status are largely the responsibility of the expatriate's employer, who has to file a once-only application with the Tax Director at the "Foreign Entities" service. This application must be filed within six months following the month in which the employment or assignment in Belgium begins. The tax office will not consider applications it receives after that period unless there are very special and exceptional circumstances that justify it doing so. Under certain conditions, the tax office may still grant applications received after the

six-month period for which there are no special justifying circumstances, but it will do so only for the year following that in which the late application was filed.

The application must comprise one or more documents, one for each expatriate wishing to benefit from special tax status including their personal formal request for special tax status. Sufficient information must be given to enable tax officers to verify that all conditions for applying special tax status have been met and whether the costs proper to the employer (that the applicants would wish to be reimbursed free from tax) have been justified.

Workforce Issues 7



The workforce in Flanders is skilled, motivated and productive. Located at the crossroads of three major European cultures, employees generally have an excellent command of languages (Dutch, French, English and German). This section provides a general guide to the legal issues related to staffing a business. Specifically, this section discusses the legal provisions with respect to recruiting and hiring staff, wages, sick pay and sick leave, social security, termination of employment, collective bargaining and special issues affecting foreign executives working in Flanders.

Workforce Issues

Recruiting and making an offer of employment

How does a company go about staffing an organization?

The simplest and least expensive method is to contact the Flemish Employment Agency (VDAB), which is well regarded by the Flemish business community. This official government agency can contact individuals listed on its extensive database and refer candidates for potential employment. There is no charge for these services. The VDAB can also assist with training candidates to acquire skills for which there is a shortage in the labor market or with training those who are unemployed.

A wide variety of services are also offered by private companies to assist with both Belgian and pan-European recruiting campaigns such as on-campus recruiting, image building and Internet recruiting. Companies can also insert classified advertisements in newspapers or place notices at universities. Many agencies assist with the recruiting of temporary personnel both for full-time and part-time assignments. A variety of executive search firms are available to assist in identifying qualified employees. Executive search firms are licensed under Belgian law.

What is the significance of the blue-collar vs. white-collar classification when making an offer of employment?

Employees are classified by law as blue-collar or white-collar. This classification is made at a national level and affects employee probation periods, vacation, paid leave in the event of work-related accidents or illnesses, methods and terms for termination, the possibility of including non-competition or arbitration clauses, notice periods and indemnities in the event of dismissal. Special rules apply in relation to some categories of employees such as sales representatives or employees working from home.

What is the Belgian system of industrial committees?

Belgium has developed a consensus model of industrial relations based on negotiation between all parties. As a result of this approach, Flanders has one of the lowest levels of strike activity in Europe. Each business operation comes under the jurisdiction of the joint industrial committee (in Dutch, "paritair comité"), which is established at national level. Each committee is made up of representatives of the employees and of the employers in equal numbers. These representatives meet to discuss labor-related issues such as minimum wages, working conditions, special protection, contractual rights and insurance. The decisions of the committee are usually binding on all firms within the industry and cover both white-collar and blue-collar employees. In the case of blue-collar workers in particular, the committee rules determine many aspects of the contractual employer-employee relationship.

What are the factors determining which industrial committee has authority over a specific company?

The core activity of the company determines which industrial committee has authority over it. Contact the Flanders Investment & Trade agency if you would like to obtain additional information about the committee system, including the specific committee that would have jurisdiction over your business.

Employment contracts

Are there any minimum standards for employment contracts?

Written employment contracts are not required but they are usually recommended. For specific employment conditions to apply, the contracts must be in writing. For example, a written contract will be required if the parties wish to conclude an employment contract for a limited duration, for a specific project or for a part-time job. Without a written document stating its duration, the contract will be subject to the rules and conditions applicable to employment contracts of an unlimited duration. Likewise, a written contract will be required if the parties wish to insert certain clauses into the contract (e.g. non-competition clauses, training clauses, trial periods, if the employee is to work from home, pre-termination agreements or part-time contracts). In the absence of a written contract, these provisions will be considered invalid.

What terms and conditions of employment are mandatory by law?

The terms and conditions of employment must comply strictly with legal provisions such as:

- Although permissible, trial periods of employment are limited in time according to the nature of the position and the level of remuneration;
- Non-competition clauses are only permitted for relatively well paid employees and their admissible coverage is strictly regulated;
- Training clauses must be limited in time, are only permitted for specific types of training and the employer is entitled to only a certain amount of reimbursement;
- Arbitration clauses may only be included in contracts of employment entered into with top-level employees who are entrusted with the company's day-to-day management or who assume similar responsibilities in a division of the corporation.

Wages

How are wages established?

The joint industrial committee of each particular sector usually fixes minimum wages for specific occupations. These minimum levels are automatically adjusted according to an index established at national level.

Do the minimum wages set by the industrial committees apply to the senior management of Belgian companies?

Minimum wages apply to all employed personnel. The company has the discretion to pay more than the minimum for all employees, including executives and senior management.

To obtain a work permit the following minimum earnings are required:

- An employee with a "leading function" must earn a gross annual salary in excess of EUR 59,460 (as of 1 January 2009);
- A "highly qualified" employee (for a maximum term of employment of four years) must earn more than EUR 35,638 (as of 1 January 2009).

Note that these amounts are adjusted annually for inflation.

Sick pay and leave

What are the requirements regarding sick pay?

Special national insurance exists for most employment-related illnesses (i.e. any sickness that is directly and chiefly caused by the job performed). A national insurance fund, to which employers as well as employees contribute, pays an employee's salary during the course of their illness. In addition, employers may be obliged to pay their personnel for certain days not covered by this fund. Different rules apply as regards blue-collar and white-collar workers.

Vacations

How is the number of vacation days determined for employees?

The number of vacation days to which the employee is entitled is determined by the number of days or months during which services were performed (or considered equivalent to work days) in the previous year. White-collar workers who are full-time and employed five days a week (the usual arrangement in Belgium) throughout a year are entitled to 20 days of vacation in the subsequent year.

Blue-collar workers are entitled to vacation on the basis of the number of effective working days performed during the year, with a maximum of 20 days under the five day week system.

Young workers who start their career after leaving school or finishing their apprenticeship are entitled to additional vacation under certain conditions.

Joint industrial committees or individual employers can grant extra vacation days.

Are employees entitled to vacation pay in addition to vacation?

Personnel are entitled to vacation pay. Again, there is a distinction between white-collar and blue-collar workers as follows:

- White-collar workers are entitled to normal remuneration for each vacation day and 92% of the remuneration of the vacation month.

- Blue-collar workers are not entitled to vacation pay directly from their employer. They are merely entitled to remuneration equal to around 15.38% of the previous year's pay to be paid by special vacation funds and financed by special contributions payable by employers.

A thirteenth month is paid to the majority of employees at Christmas, in accordance with a sector level collective agreement (or individual employment agreement).
Young workers who are entitled to extra vacation days are also entitled to a vacation allowance paid by the state for those days. At the time white-collar workers leave their employment, they will be paid a special vacation pay for any day of vacation accrued but not taken upon termination of the employment.

Are employees entitled to paid public holidays in addition to vacation?

Ten days are set aside as holidays with normal pay: New Year's Day, Easter Monday, May 1st (Labor Day), Ascension Day, Whit Monday, July 21st (Belgian National Holiday), Assumption (August 15), All Saints' Day (November 1st), Armistice Day (November 11th) and Christmas Day. When a public holiday falls on a Sunday or a normal day of inactivity the corresponding day off may be taken on the next working day, unless otherwise decided by collective agreement.

What are the regulations concerning maternity and paternity leave?

Maternity leave normally lasts up to a total of 15 weeks (19 in the case of multiple births). One week's leave before, and nine weeks leave after the birth are compulsory, five weeks are optional before or after the delivery (or 7 to 9 weeks in the case of multiple births). However, maternity leave can in some circumstances be replaced by paternity leave. Substituting maternity leave for paternity leave is unpaid by the employer. A maternity payment is payable by a special fund within the social security system. When an employee is pregnant an employer may terminate the contract only for due cause and for reasons unconnected with pregnancy. The parents (i.e. either the mother or the father) are also entitled to three months unpaid parental leave, which can be taken within a twelve-year period after the birth (different rules apply in the case of adoption). In addition, fathers are also entitled to ad hoc paternity leave of 10 days to be taken within 4 months from the birth of the child. The first three days are fully paid by the employer with the remaining seven days mostly funded by a special fund within the social security system.

Social security

How does the Belgian social security system operate?

All persons employed in Belgium by a Belgian employer or by the Belgian branch of a foreign employer are subject to Belgian social security unless agreed otherwise by an international treaty. For instance, workers originating from Member States of the European Economic Area assigned to work in Belgium may remain subjected to their own social security system for a limited period of time (up to a maximum of 24 months). Belgium has also concluded bilateral treaties with several other countries such as Algeria, Canada, Chile, Croatia, the Philippines, Israel, Morocco, San Marino, Turkey, Tunisia, Yugoslavia, Japan and the United States.
All employers are required to register with the Federal Social Security Institution (RSZ in Dutch). The employer must pay social security contributions on a quarterly basis. The employer is also responsible for withholding the social security due by employees and for making the necessary payments to the Social Security Administration. The social security system is mainly financed by contributions from both employers and employees. Employers pay approximately 32% to 35% of the gross salary of white-collar employees and 38% to 41% of the gross salary of blue-collar employees. Employees contribute 13.07% of their salary. The social security system covers healthcare, sick leave, unemployment benefits, family allowances, maternity leave and statutory pensions. This package provides for much broader coverage than in most English-speaking countries.

Are Belgian social security contributions being reduced?

Several programs have been put in place by the Belgian Government to reduce overall social security costs.

Can foreign nationals be exempt from Belgian social security?

Belgium has concluded social security treaties with several countries under which expatriates from those countries can elect to remain covered by their home country's social security

scheme while working in Belgium and be exempt from social security in Belgium.

For example, pursuant to the United States-Belgian Social Security Treaty, US expatriates who remain covered by the US Social Security Scheme can benefit from a five-year exemption from Belgian social security.

For EU citizens a similar exemption exists provided certain conditions are met. Generally, the maximum exemption period is set at five years. Different rules apply to EU citizens who are simultaneously working on the territory of two or more EU Member States.

Termination of employment

What are the legal requirements regarding the termination of employment contracts?

Employees are protected by a set of strict procedural safeguards regarding termination and consequently an employer needs to adhere scrupulously to those rules.

What is the procedure for terminating the employment of a blue-collar worker?

After the trial period, the length of the notice period for blue-collar workers who were hired for an indefinite time varies from 28 days to 112 days depending on the length of service of the worker. For blue-collar workers with less than six months' service the notice period can be shortened by individual or collective agreement to a seven-day notice period. Joint industrial committees can agree on provisions derogating from set notice periods. Provided that proper notice is given, the employer has the unilateral right to terminate a worker's employment. However, the dismissal will be considered as abusive if it is not linked to the employee's aptitude, his or her behavior or to any compelling business reasons. If the dismissal is held to be abusive, additional compensation equal to 6 months' salary will be due.

What is the procedure for terminating the employment of a white-collar worker employed for an indefinite duration?

If a white-collar worker is hired for an indefinite term of employment and has not given his or her employer substantial cause to terminate the relationship, the employee is entitled to a reasonable notice of termination in writing. Servicing the notice of termination must be in accordance with strict regulations.

"Reasonable notice" is a period sufficient to find similar employment and will be determined by taking into account the length of the employee's service, the age of the individual, the role and the salary involved.

Protection for specific groups

Does Belgium provide any special protection for specific groups of employees?

Belgium, like most countries, offers protection to certain groups of employees. For example, special rights are granted to women once pregnancy becomes known to their employer.

This includes a ban on terminating the contract of employment on the grounds of pregnancy once the employer is aware of the employee's condition and until one month after the end of maternity leave.

In situations where there are serious grounds for termination which are separate from the employee's physical condition, there is no special protection. If those reasons cannot be proven and the termination is based upon the employee's pregnancy, the female employee is entitled to compensation equal to six months' gross salary in addition to her normal entitlement.

In addition, some categories of employees enjoy specific protection by law as regards termination of their employment contract such as members of the union delegation, members of or candidates for the works council or members of or candidates for the committee for the prevention of accidents and protection at work.

Organizations representing employees

What internal rules and bodies must be established by companies?

Under Belgian law all employers must issue internal labor regulations which must be approved by the workforce and displayed on the work premises.

Any business employing 100 or more people on average must establish a works council (an employee representative body). The works council is composed of a number of representatives of both employees and employer. The number of employer representatives may not be higher than the number of employee representatives. In addition, the employers must establish an internal body for the prevention of accidents and protection at work. As soon as a business employs 50 or more people, the employer must set up a fully fledged committee for the prevention of accidents and protection at work (the Prevention and Protection Committee) to address hygiene and health and safety issues.

Social elections have to be organized every four years in order to renew these bodies.

What are the responsibilities of the works council?

The works council is predominantly an advisory body which cannot interfere with the actual management of the enterprise. The works council meets at least once a month to consult and advise on matters such as working conditions, hiring and firing decisions, social legislation and collective bargaining agreements.

The council examines initiatives aimed at increasing co-operation between management and personnel, makes recommendations, ensures strict compliance with labor safety laws and amends work regulations. It receives reports from management and communicates this information to the workforce. It must be consulted if management is considering closing down the business or terminating employment on a collective basis (special procedures).

What is the Prevention and Protection Committee?

Every employer employing 50 or more people on average is required to establish a Prevention and Protection Committee. The Prevention and Protection Committee is an employee representative body that advises on issues such as hygiene and health and safety. In the absence of such a committee these functions will be performed by the trade union delegation. In the absence of a works council, the members of the Prevention and Protection Committee will also take up some of the responsibilities of the works council.

What is the role of trade unions?

As in most continental European countries, trade unions play an important role in business in Belgium. They are involved in the industrial committees and they may also be involved at the level of individual businesses through trade union delegations. The minimum number of staff in a plant or company needed to establish a union delegation varies from 30 to 50. In most sectors, separate blue-collar and white-collar delegations exist within the same company or plant.

Multilingual issues

What are the regulations regarding multilingual issues?

Many foreign investors are attracted to Flanders because of its multicultural population and the fact that several languages are easily used in the workplace. There are a number of regulations regarding the language to be used in contracts of employment as well as in other documents involving personnel.

The language of labor-related documents must be Dutch if the company has an operational base in Flanders. If the base is located in the Walloon region the language to be used within the framework of labor relations should be French. Strict attention must be paid to these regulations because failure to comply can result in the documents concerned being null and void. Belgian law allows the complementary use of another language without penalty however, should circumstances make this appropriate. In bilingual Brussels, Dutch or French may be used depending on the mother tongue of the employee. In the German-speaking part of Belgium only German may be used.

In the Brussels region a failure to comply with this language requirement does not result in the nullification of the contract. In Brussels and the German-speaking part of Belgium a contract in another language can be replaced by a version in the correct language.

Special requirements for foreign workers

Are there any restrictions with regard to the employment of foreign employees?

Belgium classifies a foreign employee's relationship with his

or her employer in one of two ways: temporary secondment or attachment.

In the case of temporary secondment, the employment relationship is maintained with the foreign company which assigns the employee on a temporary basis to Belgium with regard to organizing, reorganizing or controlling its activities. The employee is subordinate to the foreign employer — he or she continues to receive instructions from, and is required to report to, the foreign management. He or she cannot become an employee of the Belgian company. The seconded employee remains on the payroll of the foreign company which continues to pay his or her salary. In addition, the seconded employee continues to be covered by the foreign company's social security scheme.

In the case of attachment, the foreign employee becomes the employee of the Belgian business and is listed on its payroll. The employee receives instructions from the local Belgian business and performs his or her duties under the authority of the Belgian management. The employee is also subject to the Belgian social security system.

Employees will be eligible for favorable tax status provided in Belgium for foreign executives provided they satisfy either of the following two conditions:

- They are detached either by a foreign corporation to work temporarily with its establishments in Belgium or with another company it controls, or by a foreign corporation member of an international group to work on a temporary basis with another company of the same group or with a control or coordination office of the group; or
- Are hired to work in Belgium by a Belgian subsidiary company of a foreign corporation or member of an international group.

What documents are necessary for a foreign worker to be legally employed by a company or business in Belgium?

For all employees, self-employed professionals and (self-employed) apprentices coming to work in Belgium temporarily or partially and who, in principle, are not subject to the Belgian social security system, a specific declaration (the so-called Limosa declaration) must be made before they actually start their work. This declaration can be made via the Internet at www.limosa.be .

Foreign workers must also hold a work permit to be legally employed in Belgium (European Economic Area citizens excepted – temporary measures for employees of 8 new EU Member States: Poland, Hungary, Estonia, Latvia, Lithuania, Slovakia, Slovenia and the Czech Republic). In Flanders the application is made with the competent regional immigration authority, the VDAB. The Flanders Investment & Trade agency will provide assistance in this matter. The employee will receive a type B work permit which is valid for a maximum of one year (and for employment with one employer) and is renewable. The employer is responsible for obtaining and renewing the permit.

An employee can apply for a type A work permit if he or she can prove at the time the application is filed that he or she was employed in Belgium for 4 years (in some cases 2 or 3 years) on a type B work permit (except for some types of work/functions) over a period of 10 years, during which he or she resided legally and uninterruptedly in Belgium.

A type A work permit is valid for an indefinite period and for any wage-earning employment.

Are there minimum salary requirements for obtaining a work permit?

In order to obtain a work permit an employee will need to earn the following minimum wage:

- An employee with a "leading function" must earn a gross annual salary in excess of EUR 59,460 (with effect from 1 January 2009);
- A "highly qualified" employee (for a maximum duration of four years employment) must earn more than EUR 35,638 (with effect from 1 January 2009).
- Note that these amounts are adjusted annually for inflation.

What permits are necessary for a foreign individual who is self-employed?

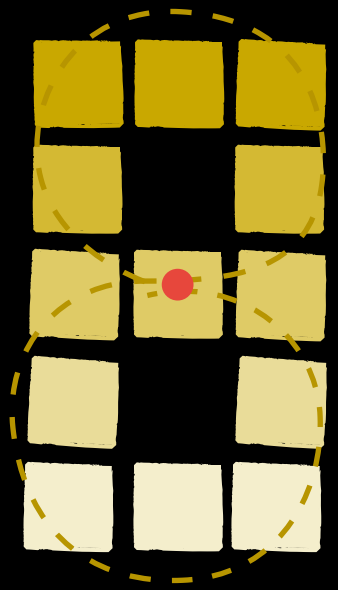
A foreign individual who is self-employed must obtain a professional card (European Economic Area citizens excepted).

A number of exceptions are provided. An application for a professional card can be filed with the Belgian Consulate or Embassy in the jurisdiction of the individual's last residence, preferably at least six months before the activity stated on the professional card application begins.

What are the rules regarding immigration of foreign employees?

A non-European Economic Area citizen planning to stay in Belgium for more than three months and planning to carry out professional activities is required to obtain a residence permit called a type D visa.
This visa is usually granted after the immigrant has obtained a work permit or a professional card allowing him or her to work in Belgium. The foreign worker must register with the municipality of his or her place of residence within eight working days of arrival. The family members of a worker who holds a residence permit will receive authorization to stay in Belgium from the Federal Ministry of Internal Affairs through the Aliens Department.
The application for expatriate tax status must be filed by the employer within six months following the month in which the worker began his or her employment in or assignment to Belgium.

Customs legislation 8



Customs legislation relates to the importation and exportation of goods into the customs territory of a certain country or group of countries. It is enforced by the customs authorities, who are responsible for collecting and safeguarding customs duties and for controlling the flow of goods into and out of a country or group of countries. Customs legislation not only relates to tariff measures such as customs (and similar) duties, but also to non-tariff trade measures such as import quotas as well as various other measures to safeguard public health and the economy of the country involved (through the use of import restrictions etc).

This section provides a general overview of the taxes applicable on and the customs procedures available for the foreign investor involved in importing goods into and distributing goods via Flanders (Belgium).

Why import and/or distribute via Flanders?

Because of its central location in Europe and its logistics infrastructure, Flanders is a major player in importing goods in the EU and a gateway for distribution within the wider European market. Consequently, the region has developed a flexible system of law and tax treatments related to imported goods (whether they are ultimately destined for other EU countries or for countries outside the EU). In particular, various indirect tax incentives need to be mentioned when importing and distributing products via Belgium:

- The business-orientated approach of the Belgian customs authorities, who are very approachable to companies wishing to discuss and resolve possible customs-related issues;
- Various VAT incentives, which are of particular benefit to companies importing and distributing via Belgium

In 2008 the Authorized Economic Operator (AEO) accreditation (an important new customs concept) has been implemented in Belgium and the other EU Member States. This accreditation (which is valid in the entire EU and is recognized by all the Member States) provides for the simplification of various customs procedures and a smoother supply chain (with less interference from customs for AEO-accredited companies). In future, real "green trade lanes" with none (or very little) customs control will be created between countries (regions) with similar AEO accreditations (e.g. the US C-TPAT program).

Importation in Flanders (Belgium)

What are the general principles governing Flemish (Belgian) customs legislation?

Belgium (and consequently also Flanders) is part of the European Union (EU), which consists of 27 Member States. The EU is built on a customs union between its member states, which implies that: 1) no duties or other trade-restrictive measures are imposed on trade between the member states (intra-community trade) and: 2) a common external tariff (customs duty) is imposed on trade with third countries (import and export transactions). Consequently, internal and external trade of the EU member states as well as the main customs procedures are governed by European legislation. The main EU legislation can be found in the Community Customs Code (CCC) and its Implementing Provisions (IPCC). In 2008 the old 1992 CCC has been replaced by the Modernized Customs Code, which will be fully applicable as soon as its new IPCC has been published.

However, some aspects such as administrative law, the payment of duties and the preservation of law are still organized on a national (Belgian) level.

The customs authorities are responsible for supervising the importing and exporting of goods as well as for the collection of duties. In Flanders this task is performed by the Federal Public Service - Finance - Customs and Excise Administration (see www.belgium.fgov.be).

How are customs duties levied when shipping goods to or from Flanders?

Although customs duties can be imposed upon imports and/or exports, in practice, customs duties are mainly imposed on imports of goods into the EU (Belgium). In addition to customs (import) duties, there are also import-VAT and ultimately other national taxes (such as excise duties, environmental taxes etc), which are levied upon importation of goods. These national taxes (as well as import-VAT) may vary between the various member states.

How are import duties calculated in Flanders?

At the time of importation into the EU, goods are subject to customs control and customs duties are imposed. In all EU member states the calculation of import duties is governed by the same European principles (these being the nature, value and the origin of the imported goods). Import duties can be expressed as an ad valorem percentage, a fixed rate or a mixed rate.

How do you determine the nature of the imported product?

The nature of the imported goods are determined by their classification into the Combined Nomenclature (CN), in accordance with globally accepted principles. The CN is a standardized list of commodities and their 8 digit CN codes. The CN code of the particular imported product determines the appropriate rate of import duty, as well as other trade measures such as quotas, exemptions, suspensions etc which are applicable to that particular category of goods.

The applicable customs duties and national taxes (as well as the related European and national legal provisions), are listed per CN code (product type) in the "Applied Customs Tariff Database" issued by the Belgian Government (this is freely available on the Belgian Federal Public Service – Finance website).

How do you determine the customs value of the imported product?

The rules for determining the customs value of imported goods are based on European legislation (and developed in line with the WTO customs valuation agreement). The basis for determining the customs value of imported goods is their transaction value. If such a transaction value is not available (or if not all the requisite conditions are satisfied), then the regulations dictate which other valuation method should be used.

For certain types of products such as agricultural or excise products, fixed amount duties are applied to the imported quantity of the goods.

How do you determine the origin of the imported product?

Origin is the "economic" nationality of goods in international trade. There are two types of origin, namely:

- Non-preferential origin. This confers an economic nationality on goods, and is used for determining the origin of products subject to various commercial policy measures (such as anti-dumping measures, quantitative restrictions or tariff quotas), as well as for statistical purposes;

- Preferential origin. This confers certain benefits, e.g. entry at a reduced rate or zero rate on goods traded between particular countries with whom the EU has preferential trade relations.

What is the initial customs treatment of goods entering Belgium (Flanders)?

From the moment goods are introduced into the customs territory of the EU they are subject to customs supervision, and must be taken to a customs office or to a customs-approved location to be submitted to customs authorities. Goods transported by a sea vessel can be kept in storage for 45 days in a customs-approved location. All incoming goods transported by another means of transportation (airplane, inland marine vessel or truck) can be kept in storage for 20 days. Within this timeframe, the goods must be declared for an approved treatment by customs (either a customs procedure, entry in a free zone/warehouse, re-exportation or destruction/ abandonment to the Exchequer).

Which customs procedures can be used when importing products into Flanders?

Goods which enter the customs territory of the EU can be declared for one of the following customs procedures:

1. Release for consumption – importation
2. Transit
3. Temporary admission
4. Customs warehousing
5. Inward processing
6. Processing under customs control

Each of these procedures is discussed below. With the exception of release for consumption, the above mentioned customs procedures provide the option of suspending the payment of import duties.

1. Release for consumption – importation

An import declaration needs to be made at an EU customs border office (at a seaport, airport or any other office in Belgium). After acceptance of the import declaration by the customs authorities, the goods are released into the EU for consumption. However, the declaration will only be accepted provided that the duties (import duties, import-VAT and other possible national taxes) are paid, and all other import requirements (e.g. non-tariff measures such as quotas or public health requirements) are fulfilled.

In principle, import duties and import-VAT are paid at the office of importation. If the import declaration is made by a licensed customs broker appointed by the importing company, the broker can pre-pay the duties and VAT to the customs authorities. Providing certain conditions are met, the deferred payment of duties can be permitted.

Upon customs authorization, simplified procedures may be applied at the time of importation. These simplified procedures may permit companies to release the goods without the customs authorities undertaking physical checks at the company's premises. Furthermore, exported goods that are re-imported can benefit from duty exemption provided certain conditions are met (goods should not be altered and must return within a period of three years).

When importing goods into Belgium, companies can obtain rulings from the Belgian Central Customs Administration regarding issues such as the tariff code of the imported goods, the origin of the goods, the customs value of the goods, customs warehouses and other customs procedures. Tariff and origin rulings are binding across the entire EU.

In principle, when goods are released for consumption VAT also becomes due. However, depending on the circumstances, various procedures exist in Belgium for the import-VAT to be exempted or deferred:

- In accordance with specific Belgian regulations, the exemption of import-VAT can be granted if the goods are immediately supplied to another EU country, or when the goods are placed under the VAT warehousing procedure;
- If special Belgian authorization has been obtained, com-

panies (including non-resident companies with a Belgian VAT number), are allowed to declare the import-VAT in their monthly or quarterly Belgian VAT return. This implies that the import-VAT can be declared as VAT due and VAT deductible in the same VAT return (i.e. a virtual payment with no effect on cash flow). However, in order to apply this ruling the VAT authorities request a limited pre-payment of import-VAT.

In some cases a refund or remission of import duties and import-VAT is possible. This applies for example to defect goods at the time of importation, or to goods rejected because they do not conform to the purchase contract

In addition to import duties and VAT, other taxes such as excise duties, energy or other taxes may be due upon importation. However, various warehousing facilities exist in Belgium to defer or avoid the payment of these taxes. E.g. products subject to excise duties can be released for consumption without the immediate payment of the excise duties, by entering them into an excise warehouse.

2. Transit

The European Community transit system allows both community and non-community goods to be transported across the EU and the EFTA countries (Iceland, Norway, Liechtenstein and Switzerland), with the suspension of all taxes upon importation.

Under the transit system the transport requires a community transit declaration, which will be lodged (and discharged) electronically via the New Computerized Transit System (NCTS). Depending on the customs status of the goods, a distinction is made between the T1 external transit procedure (non-community goods), and the T2 internal transit procedure (community goods). A deposit equal to the import taxes involved covering the entire itinerary must be paid (if certain conditions are met this may be reduced to 30% or 50% of the amount at stake). However, this deposit is released when transportation is completed and the transit system is discharged at the country of destination of the goods.

3. Temporary admission

When goods are temporarily imported (or imported with an "ATA carnet"), they can be granted a partial or total exemption of import duties (provided the goods are subsequently re-exported without having undergone any transformation). For temporary imports the "ATA carnet" issued in the country of dispatch can replace EU customs documents.

4. Customs warehousing

A customs or bonded warehouse is a facility where imported goods can be stored without being subjected to import duties, VAT and other import taxes and non-tariff trade policy measures. Bonded warehouses allow importers to postpone the payment of import duties and import-VAT, until the final destination of the goods is known. This means that no import taxes are due as long as the goods are not released for consumption in the EU. If the goods are immediately exported to destinations outside the EU no taxes are paid.

Two main categories of bonded warehouses exist:
- Company-operated private bonded warehouses, which are located across the country;
- Customs authorities-operated public bonded warehouses. These bonded warehouses are located primarily at ports and airports or in transport zones

There are three types of private bonded warehouses: type C (standard), type D (allowing customs valuation upon entry of the goods) and type E (non-physical warehouses, in which bonded goods can be stored in any of the storage facilities of the warehouse keeper, and not just in the one customs-approved warehouse). The customs authorities will focus on the warehouse keeper's stock movement records for their controls, rather than perform physical inspections of the goods.

There are three types of public bonded warehouses: type A (monitored by the customs authorities on the basis of the warehouse keeper's stock records), type B (monitored on the basis of the entry and discharge documents) and type F (managed directly by the customs authorities themselves).

When operating a bonded warehouse a stock control system needs to be kept, and depending on the type of bonded warehouse and the authorization obtained from the customs authorities, the inbound and/or outbound movements need to be reported periodically to the customs authorities. In addition, some well defined approved 'usual forms of handling' (e.g.

re-packing, testing, marking etc) may be carried out on the goods.

A company can obtain a Single European Authorization (SEA) to operate various bonded warehouses in different EU Member States, if required. Such SEA can allow for the customs clearance from the warehousing regime at a central point.

Non-EU goods can also be stored in a VAT warehouse or excise warehouse at the time the goods are released for free circulation (payment of import duties, if any). This makes it possible to store the free goods without payment of import-VAT or excise duties.

5. Inward Processing Relief (IPR)

The IPR procedure is a customs procedure which allows goods due for processing operations (which are to be performed within the EU customs region) to be imported with customs duties suspended or repaid, provided the processed goods are then exported outside of the EU. Processing operations can comprise an industrial upgrade or the alteration of an imported product to increase its value. However, it can also involve smaller operations such as repairs, fine-tuning or other improvements where the economic impact is negligible.

There are two main types of inward processing relief:

- **IPR (Suspension System):** Under this IPR system non-community goods can be brought into the customs region for processing operations without them being subject to tariff and non-tariff import measures, insofar as the processed goods are intended for export outside the EU (with the possible exception of some agricultural products). This implies that neither import duties nor import-VAT will have to be paid on the imported goods, insofar as the processed goods resulting from it are exported. If the processed goods are not exported, the initial import duties/ VAT (as well as compensatory interest) will become due;
- **IPR (Draw-back System):** Under this IPR system the import duties and import-VAT on imported goods have to be paid before the goods undergo processing operations in the EU. However, if the processed goods are exported from the EU the importer can reclaim the import duties and import -VAT paid on the imported raw materials. This method could be beneficial for companies who do not know how much of the imported goods will be exported and how much is for use in the EU. Under this system a company will not be charged compensatory interest on the goods released into the EU.

6. Processing under customs control

In general, raw materials are subject to lower import duties than semi-finished/finished products (in order to attract processing operations to the EU). However, tariff discrepancies still exist, with higher rates of import duty on raw materials than on the finished products.

Processing under customs control (PCC) is a customs procedure which allows raw materials to be imported under suspension of import duties, in order to be processed under customs supervision in the EU. After the processing the finished goods can be imported at the lower rate of import duty.

Intra-community supply and exportation from Flanders (Belgium)

Why is importing goods into Flanders appealing if the goods are ultimately destined for another EU Member State (intra-community supply)?

When importing goods into Flanders (Belgium), the importation can be exempt from import-VAT if the goods are subsequently sent to another Member State (intra-community supply), and if the required (but simplified) conditions have been complied with. In addition, other procedures exist to exempt goods from import duties (transit procedure) and excise duties (suspension procedure) when they are shipped to another Member State.

What are the advantages of exporting goods from Belgium?

When goods are exported from Flanders (Belgium), the sale of the goods can be exempted from excise duties and VAT, and refunds can be obtained for certain agricultural products with an EU-origin.

How are agricultural exports treated?

Agricultural export funds can be granted to exporters for the export of European (and European-processed) agricultural goods, even if the processed goods contain non-EU goods.

What are the main existing export procedures?

1. Exportation
2. Temporary exportation
3. Outward processing relief

1. Exportation

The export procedure regulates the exporting of goods out of the EU customs region. In principle, and pursuant to EU provisions, an export declaration must be submitted to the customs office responsible for control at the place where the exporter is established, or where the goods are packed and loaded onto the outward-bound vehicle.

The exporter is the person on whose behalf the declaration is made, and who is the owner of the goods or has a similar right over the goods. The formalities are usually completed by means of a customs declaration accompanied by appendices (such as a copy of the invoice and possibly an export license or an export certificate).

2. Temporary export

Goods can be temporarily exported - e.g. in order to be exhibited or delivered abroad on a trial basis. Provided the export declaration is filed correctly, an exemption of import duties can be granted upon re-importation. In certain situations, the "ATA carnet" can be more beneficial and replace the temporary export declaration.

3. Outward processing relief (OPR)

Outward processing relief is a customs procedure which allows EU goods to be temporarily exported to undergo processing operations outside the EU customs region. Afterwards, the processed goods can be imported into the EU with partial or complete exemption of import duties and VAT

Options for sales operations

What are the available options for setting up sales operations in Belgium?

Several options are available for setting up sales operations through third parties in Belgium. The most important middleman options are: the agency agreement, the distribution agreement and the franchise agreement.

1. Agency agreement

What is an agency agreement?

An agency agreement is a contract between an agent and a principal. The agent is an independent commercial intermediary who acts on a permanent basis for a principal to promote and sell the principal's products.

A disclosed agent reveals that he acts on behalf of the principal. He merely passes orders to the supplier of the goods and is not the contracting sales entity. He cannot act as the importer of the goods. In the case of a disclosed agent the principal/owner of the goods will have to act as the importer of the goods.

An undisclosed agent does not reveal his principal - he acts in his own name, but on behalf of the principal/owner of the goods. He contacts with the customers and can act as an importer of the goods.

How is the agency agreement regulated?

The status of the agency agreement is regulated in a flexible manner by European legislation. The law sets out the rules and duties of the agent and the principal. In particular, it covers the rules that govern the right to have an agency fee, how the amount of the agency fee is to be determined, and how an agency agreement is terminated.

2. Distribution agreement

What is a distribution agreement?

A distribution agreement is a contract between a distributor of goods and a manufacturer or supplier. A distributor is a commercial intermediary who sells to customers (in his own name and on his own behalf), products acquired from the manufacturer or a supplier. The distributor can act as importer of the goods. Distributors with limited functions and risks are entitled to small sales margins

How does Belgian law regulate distribution contracts?

Belgian law does not regulate distribution contracts as such, but provides several very specific rules with regard to their termination. Parties are still entitled (as they deem appropriate), to agree the terms and conditions of their relationship within the usual limits of the general principles of law and public order.

The law grants distributors specific protection from termination of the contract by the principal only when the distribution agreements are exclusive, semi-exclusive or impose such substantial obligations on the distributor that he would suffer considerable hardship in the event of termination. The law specifies that either a reasonable notice period be given, or adequate compensation be paid, to the distributor. To ensure that distributors benefit from this protection, a specific set of rules has been incorporated into law.

3. Franchise agreement

What is a franchising agreement?

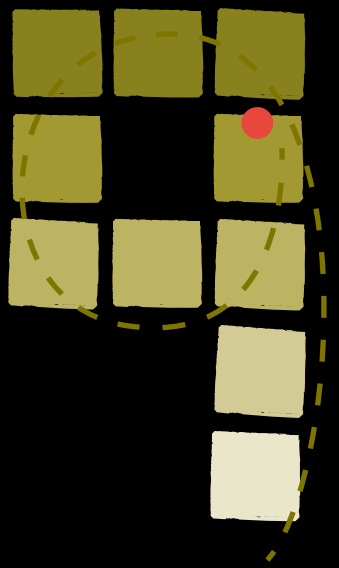
Under a franchising agreement the "franchisor" makes available to the "franchisee" the proven methods and trademarks of his business, in return for a fee and a percentage of gross monthly sales.

What are the rules in Belgium with regard to franchise agreements?

Under Belgian law there are no specific rules governing franchising. Parties are thus free, within the framework of the general principles of contract law and public policy, to enter into contracts as they wish.

Please note that the Modernized Customs Code was published in June 2008. This Modernized CCC will amend the existing customs legislation and customs procedures. However, these rules have not yet been implemented as the new implementing provisions to the CCC have not yet been published. Consequently, we have not explained the new rules. Although the main principles will remain the same, some major changes are planned. Therefore, companies should verify the possibility of new customs legislation being implemented when applying customs procedures.

Competition law 9



This section describes **Belgian competition law**, which is designed to maintain fair and competitive markets. The topics covered include the control of mergers and acquisitions and the prohibition of **restrictive practices**.

Overview

What is the legal basis of competition law in Flanders and who is responsible for enforcing it?

Competition policy is within the jurisdiction of the Belgian Federal Government. The Competition Act of 10 June 2006, coordinated by Royal Decree of 15 September 2006, governs the protection of competition.

It applies throughout Belgium. With regard to both procedure and substance, the legal provisions are modeled on EU competition law. There are two main bodies responsible for enforcing competition law: (i) the Competition Council ("Council"), which is an administrative court, to which an Auditoraat has recently been attached and (ii) the Competition Service ("Service"), a department within the Ministry of Economic Affairs, which is responsible for the investigation of market conduct and for mergers under the supervision of the Auditoraat. The Auditoraat is in charge inter alia of receiving complaints, applications for interim measures relating to competition restrictive practices and merger notifications. The Auditoraat is also responsible for organizing investigations. Upon completion of a particular investigation, the Auditoraat must submit a report to the Council, which has the decision-making power in competition matters.

Mergers and Acquisitions

When must a merger or acquisition be submitted to control in Belgium?

If the combined turnover of the businesses involved in a merger or acquisition (not necessarily restricted to the parties) exceeds 100 million EUR in Belgium and the turnover of each of at least two of the participating businesses exceeds 40 million EUR in Belgium, the transaction is subject to mandatory pre-merger filing.

However, the transaction is not subject to control in Belgium if the merger or acquisition has an EU dimension and is therefore subject to EU jurisdiction (unless the merger or acquisition is referred back to the Belgian authorities by the EU Commission pursuant to Regulation (EC) 139/2004). As a rule, mergers or acquisitions have an EU dimension if the combined aggregate worldwide turnover of all entities involved is more than five billion EUR and the aggregate EU turnover of at least two of those entities is more than 250 million EUR, unless each of the entities involved derives more than two-thirds of its aggregate EU turnover within one member state. However, in some specific circumstances a transaction that does not meet these criteria will nonetheless be considered as having an EU dimension.

What is the test for approval of a merger or acquisition?

Mergers or acquisitions will be declared inadmissible if, as a

consequence, they hinder significantly effective competition in the Belgian market or a substantial part of it, for instance by creating or strengthening a dominant position. Any merger or acquisition where the undertakings involved have a combined Belgian market share of less than 25% must automatically be approved by the Council. The companies carry the burden of proof. The notification form imposes on the parties the obligation to provide the data that enables the Council to determine the relevant product and geographical markets. The form defines the relevant product market as the market comprising all products and/or services that are considered by the consumer to be exchangeable or substitutable having regard to their characteristics, prices and purpose.

The relevant geographical market is that part of the Belgian territory where the goods or services in question are offered and requested, where the competition conditions are sufficiently homogeneous and which may be distinguished from other areas. In a number of cases, the Council distinguished between the relevant geographical market (restricted to Belgium) and the effective geographical market that goes beyond Belgium.

The authorities will focus on the impact of a transaction on the relevant geographical market (i.e. usually the entire Belgian territory). In a few cases where the product market appeared more local (such as advertising, retail trade for daily consumption goods, real estate renting etc) the authorities have restricted the relevant geographical market to the specific relevant local area. As stated above, the effective geographical market may also be broader. If the Council has prohibited a merger or acquisition, the federal Council of Ministers may, at its own initiative or at the request of the parties involved, override the decision and approve the transaction on the grounds of general interest (e.g. where national security interests or employment considerations justify this action). The Council of Ministers must act within 30 working days of the notification of the Council's negative decision.

1. First phase

- Date X

Filing of notification with the Auditoraat

The first-phase investigation period starts running from the next business day after filing the notification with the Auditoraat and expires 25 working days later provided the application contains all the information required.

- No later than X + 25 working days

Submission of a report by the Auditoraat to the Competition Council

The report is made available to the notifying parties by the Auditor. The parties have access to the file's non-confidential documents (including Competition Service correspondence with clients, competitors and third parties). The parties may also submit comments. When the Auditor considers that the admissibility of a transaction is questionable, he shall inform the parties at least 5 days prior to filing his report. The undertakings then have a 5 day working day period during which they may underwrite commitments with a view to the transaction being declared admissible.

- No later than X + 40 working days

Decision of the Competition Council

The Council can decide either:

(i) that the transaction does not fall within the scope of the law, or else

(ii) that the transaction falls within the scope of the law and in that case conclude

  (a) that the transaction is admissible subject to compliance with the commitments underwritten, or

  (b) if it considers that there are serious doubts as regards the admissibility of the proposed transaction that a second-phase investigation must be initiated. In that case, the Auditor will be required to provide a second report no later than 30 working days following the decision of the Council, or even

(iii) not to take a decision (in which case the transaction will be deemed to be approved once the 40-day period has expired). This period will be extended with 15 working days if the parties underwrote commitments with a view to the transaction being declared admissible.

2. Second Phase

- Date Y

Decision of the Competition Council to open a second-phase investigation

The second-phase investigation period expires 60 working days after the Competition Council opens the investigation.

- No later than Y + 60 days (unless the parties request an extension)

Decision of the Competition Council

The 60-day period may be extended at the request of the parties. In the absence of a decision by expiry of the 60-day period, the decision is considered favorable.

3. Decision by the Council of Ministers

- Clearance by the Council of Ministers is no later than 30 working days after notification of the Competition Council's decision

The Council of Ministers can clear a transaction that was blocked by the Competition Council on general interest grounds. In the absence of a decision within the 30-day deadline, the Council of Ministers is deemed to have confirmed the prohibition decision. In the absence of a decision within that period of time, the decision is deemed negative.

4. Simplified procedure

The parties may apply for a simplified procedure. (For such transactions, a simplified notification form requiring less detailed information can be completed). The Auditor will confirm no later than 20 working days after a full application has been filed, whether or not he considers that the conditions for the application of the simplified procedure are met.

5. Appeal

Notifying parties and third parties who appeared before the Competition Council may appeal the decision of the Council before the Court of Appeal of Brussels within 30 days of notice of the decision.
An action for annulment can be introduced against the decision of the Council of Ministers before the Raad van State, the highest administrative court, within 30 days of notice of the decision.

What are the time limits for filing?

A merger or acquisition must be notified to the Auditoraat with a view to the transaction being submitted for the prior approval of the Competition Council. The notification must take place before implementation of the transaction and after closing of the transaction, execution of the merger, publication of the takeover or exchange bid or acquisition of a controlling interest. It is also possible to notify on the basis of a draft agreement provided that the parties intend to conclude an agreement that does not differ from the draft that was notified. Notification is mandatory. The transaction may not be implemented before a decision has been made by the Council.

How long does it take to obtain a final decision on the approval of the merger or acquisition and what is the test for acceptance?

Once a concentration is notified, the Council has 40 working days[1] (known as the "First Phase") either to clear the transaction or to initiate an in-depth investigation. Once the Council has decided to initiate an in depth investigation (known as the "Second Phase"), the Council must reach a decision within 60 working days of the opening of the Second Phase, unless the parties have asked for the deadline to be extended.

There is a standstill obligation during the review period (i.e. the parties are not allowed to implement the transaction). If the Council does not take a decision within the deadline, the transaction is deemed admissible. The test is whether the merger or acquisition creates a market position that has a significantly adverse effect on effective competition in the Belgian market or on a substantial part of it.

Restrictive Practices

What types of business practices are prohibited?

All agreements, decisions and concerted business practices that have as their objective or effect the distortion, prevention or restriction of competition to an appreciable extent, as well as abuse of a dominant position, are prohibited and may result in fines. Following the modernization of EU competition law,

1 This period will be extended with 15 working days if the parties underwrote commitments with a view tot the transaction being declared admissible.

Belgium has now abolished the prior notification system that was previously in place. Companies will now need to make a self-assessment and national courts (if called upon in the course of litigation) will be competent to rule whether an agreement merits exemption. The Council and the Auditoraat may publish guidelines to define the policy conducted as regards the definition of the various concepts included in the legal definitions.

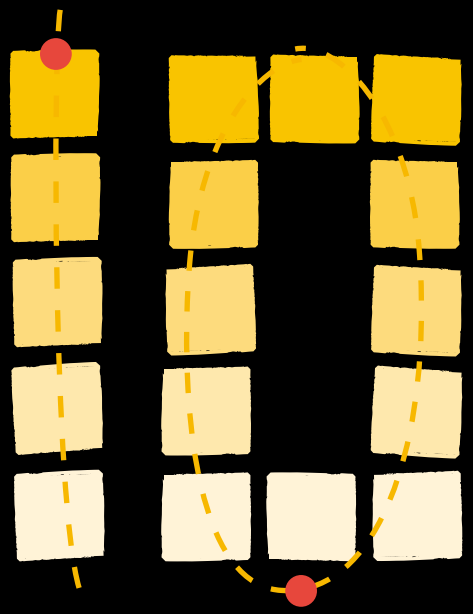
What are the obligations imposed on a company enjoying a dominant position in the relevant market?

Companies in a dominant position must not abuse this position. Dominant position is legally defined as the position that enables a company to hinder actual competition, thereby allowing it to behave independently of its competitors, suppliers and customers. There is no market-share threshold to determine this dominance of the market. Examples of abuses include refusal to supply as well as discriminatory, predatory or tying practices. Tying practices are practices in which the dominant seller refuses to sell its products unless the buyer also purchases another product. No exemption from the ban on abusing a dominant position may be obtained from the Council. Upon the request of the company, the Council may issue a negative clearance confirming that the practices concerned do not fall within the scope of the law and will not be fined.

What are the penalties for companies that violate competition laws?

Fines of up to 10% of Belgian turnover can be imposed on companies that engage in restrictive practices (including abuse of a dominant position) or that have implemented a merger or acquisition without prior approval. A fine of up to 1% of the same turnover can be imposed in the event that a company willfully, or by negligence, provides incorrect or incomplete information in reply to a request for information from the authorities or if it proceeds with a merger or acquisition without prior notification.

Intellectual property 10



This section provides an outline regarding intellectual property **protection law** in Belgium. Protection relating to intellectual property rights extends to **trademarks, copyright, patents, software, designs and models and database rights**. Although trade secrets, confidential information and special know-how are not considered to be intellectual property as such, a certain amount of protection extends to these as well.

Trademarks

What are trademark rights and how are they obtained?

Trademarks are defined as any name, drawing, symbol, stamp, letter, figure, shape of products or packaging and any other sign or any combination of these adopted and used by a manufacturer or merchant to identify and distinguish his goods from those manufactured or sold by others.

Trademarks may cover products or services. Most trademarks are individual, but labels (or collective trademarks) are regulated too. Trademark rights in the Benelux countries are generally conferred by the first registration and not by the first use of the trademark. However, in order to avoid abuses several exceptions are stipulated which grant a priority right to the first user.

The application for registration is submitted to either the Belgian administration or to the Benelux Office for Intellectual Property at The Hague. The authorities who receive the application will, upon the explicit request of the applicant, conduct an anteriority search that will enable the applicant to determine whether the proposed trademark is or is not in conflict with an existing trademark.

As soon as the formalities are fulfilled, the authorities will publish the application. Within 2 months, starting from the first day of the month following the publication of the application, the owners of earlier trademarks can object (under specific conditions) to the registration of a new trademark by filing an opposition.

Any trademark protection sought in Belgium will apply to all three Benelux countries: the Netherlands, Belgium and Luxembourg.

The cost of Benelux protection (in maximum 3 classes) amounts to about EUR 600 (including agent fees and official taxes, excluding VAT).

Apart from a Benelux Trademark, there is also the possibility of obtaining a Community Trademark that grants protection in all 27 Member States of the European Union. A Community Trademark application must be filed with, and is granted by, the Office for Harmonization in the Internal Market (OHIM) in Alicante.

The cost of protection across the entire European Union in maximum 3 classes amounts to some EUR 2,500 (including agent fees and official taxes, excluding VAT), provided no opposition to the application is filed and the administration of the OHIM has no observations.

Belgian National Office:
Ministry of Economic Affairs (PIIE)
North Gate III
Koning Albert II-laan 16
1000 Brussels, Belgium
Tel: +32 2 206 48 18
Fax: +32 2 206 57 50

The Benelux Office for Intellectual Property
Bordewijklaan 15
NL-2591 XR Den Haag, The Netherlands
Tel: +31 70 349 11 11
Fax: + 31 70 347 57 08
Website: http://www.bmb-bbm.org

Office for Harmonization in the Internal Market
Avenida de Europa, 4
E-03008 Alicante, Spain
Tel: + 34 96 513 9100
Fax: + 34 96 513 1344
Website: http://oami.europa.eu/en/dialog.htm

What is the nature and duration of the protection provided to a trademark?

Once the registration procedure is completed, the holder is granted protection. This protection lasts for ten years and can be renewed without limitation. Loss of protection can occur if the genuine use of the trademark has been suspended for an uninterrupted period of five years. With limited exceptions, the trademark may not be modified after it has been registered or at the time of renewal.

A holder of a trademark can oppose its unlicensed use (i.e. if the distinctive or advertising function of the trademark is under attack, which generally occurs when the trademark or a similar sign is used abusively by another business in respect of identical or substantially similar products or services). The holder can go to court to obtain an injunction against its use and can be awarded monetary damages or have fines imposed.

Copyright

What is copyright?

Copyright (or authors' rights) protects "artistic and literary works" (that is to say the original expression or presentation of an idea). Copyright protection in Belgium exists from the moment that the original created expression or presentation is produced, without any registration being required. Copyright can only be created by natural persons. However, copyright, with the exception of the moral rights it includes, is freely transferable to corporate entities. In a situation where there is more than one creator of a work, each creator can separately exploit his or her own contribution to the work, provided such exploitation does not compromise the exploitation of the common work. Alternatively, the better solution is that all of the creators settle exercise of their rights contractually. However, even if it is not possible to split the contributions and the authors did not enter into an agreement, each creator is entitled:

- To pursue (in his or her own name and without any intervention of the other creators) any infringement upon the copyright;
- To demand compensation for his or her part;
- Where the creator of the work is unknown, the editor holds the rights until authorship is determined.

What type of protection is granted to the author of a copyright?

Copyright is valid for up to 70 years after the death of the author. In cases of multiple authorship, this period is calculated from the time of death of the last survivor. Where the author is unknown, the original publication date is used. Belgian copyright law makes certain distinctions in respect of the legal protection of copyright. Pecuniary rights (i.e. the right to control whether and how the work will be reproduced and the right to prevent the work from being made available to the public) are typically associated with property rights and may be transferred or licensed. In turn, moral rights (i.e. the right to have the authorship known, to decide when the work will be disclosed and to oppose any modification of the work) are included in the copyright definition as artistic integrity. In principle, moral rights as opposed to pecuniary rights are inalienable. Copyright protection mainly includes:

- The right to control the method of reproduction and the method of communication of the work;
- The right to have the authorship known;
- The right to decide when the work will be disclosed;
- The right to oppose any modification of the work.

Patents

How are patents protected?

Patent protection is available to inventions which are new, which involve an inventive step and which are used for industrial applications. The Belgian Patent Act clearly states that inventions are patentable even if they concern a product consisting of or containing biological material (i.e. any material containing genetic information and capable of reproducing itself or being reproduced in a biological system) or a process by means of which biological material is produced, processed or used.

To qualify as an invention, an item may not belong to the current status of technology. Patents can be obtained for a new product, a new process, a new application of known means or a new combination of known means. Applications for a Belgian patent may be filed by the inventor or his assignee (such as his employer). The patent application is filed with the Ministry of Economic Affairs. The above-mentioned application is submitted on a form provided by the National Patent Office. The filing procedure involves the submission of technical drawings and specifications that must be sufficiently detailed to allow an individual, who possesses minimum qualifications in the relevant field, to create and assemble the device without too many problems.

Patent protection lasts for 20 years. To be granted protection, a search is required. Once a patent is registered, the holder must pay annual taxes on the patent that accrue from the third year after the granting of the patent. The tax on a Belgian patent starts at EUR 35 for the third year and amounts to EUR 545 in the 20th and final year. Patent protection includes the exclusive right to exploit the invention and to grant licenses or to assign the patent. However, there are several exceptions relating to patent protection. Where the holder fails to make the technology available to the public, protection is not granted.

Unlike trademarks and designs, there is no Community Patent. However, on the basis of the European Patent Treaty, there is a possibility to obtain a bundle of national patents through one centralized procedure.

Software

How is software protected?

Within the Member States of the EU, computer programs may be protected by copyright and by patent, provided, of course, that the protection conditions of both protection means are met.

- Copyright protection applies to the expression in any form (the source or object code) of a computer program (i.e. the software as such), its interfaces and the preparatory design material. As a general principle of copyright law, the ideas and principles that underlie any element of a computer program, including those that underlie its interfaces, are not protected by copyright. The computer program must be original in the sense that it is the author's own intellectual creation. The copyright protection of a computer program that meets the aforementioned protection conditions is not subject to any formalities. The owner of the copyright of a computer program is the natural person (or group of natural persons) who created the software. However, it is important to note that under Belgian law the employer has been designated as the copyright holder with respect to computer programs made by one or more employees in the exercise of their tasks or following instructions given by the employer. If the software is developed by independent contractors, a transfer of the intellectual property rights to that software will have to be provided for contractually, if the company having ordered the computer program wishes to acquire copyright title to the given software. To avoid controversy, a clear contractual agreement is always advisable, even in the employer/employee relationship. With respect to the duration of copyright protection, the general rule applies. (See also "Copyright" above).

- In principle, computer programs as such (and methods of doing business) are excluded from patentability in Europe (as opposed to the USA and Japan). The European Patent Office has accepted that a computer program will not be excluded from patentability under the European Patent Convention if, when it is run on a computer, it produces

a further technical effect that goes beyond the 'normal' physical interactions between the program (software) and the computer (hardware). Merely running software is not sufficient. There must be a technical result or effect (i.e. a solution to a technical problem). E.g. production process control software could be patentable if the result is a change in the production process that enhances production capacity. In order to be patentable, the computer program must in any case meet the conditions that apply for all types of inventions (See also "Patents" above).

Designs and Models

How are designs and models protected?

As in the case of trademarks, there is a Benelux system that co-exists with a European Community system.

The Benelux law involves the same criteria for validity and infringement and the same lifetime as those for Registered Community Designs.

Under those rules, protection is granted to the appearance of the whole or a part of a product resulting from the features, particularly the lines, contours, colors, shape, texture and/or materials of the product itself and/or its ornamentation.

In order to be protected, the design must be new and have an individual character. A design is considered new if no identical sign has been made available to the public before the date of application for registration. A design has an individual character if the overall impression it produces on informed users differs from the overall impression produced on such users by another design that has been previously made available to the public.

No protection is granted to the features of appearance of a product that are solely dictated by its technical function, or to the features of appearance of a product that must necessarily be reproduced in their exact form in order to permit the product, in which the design is incorporated (or to which it is applied to be mechanically connected to, or placed in, around, or against another product), so that either product may perform its function.

Benelux designs and models must be registered in order to be protected. Community models do not necessarily have to be registered, but there are two major differences between a Registered and an Unregistered Community design. The first difference is the duration of protection: an Unregistered Community Design is granted protection for three years, whereas Benelux models and a Registered Community Design are granted protection for a term of five years, renewable up to a maximum of 25 years.

The second difference is that the Registered Community Design will protect the owner against copying, as well as against the independent development of an identical or similar design, whereas the Unregistered Community Design will only protect the owner against the copying of his design. It is possible to combine copyright protection with the protection granted by the Laws on Designs and Models. Costs for registering a Benelux Design or Model amount to some EUR 400 (including agent fees and official taxes, excluding VAT). Costs for the registration of a Community Design amount to some EUR 730 (including agent fees and official taxes, excluding VAT).

Database Protection

What is a database?

A database is a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.

How are databases protected?

Within the EU, double protection is possible, provided of course, that the protection conditions are met for each protection regulation.

- In EU Member States, databases that, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation are protected as such by copyright (see above in the section concerning copyright). To be protected under copyright regulations the selection and/ or the arrangement of the contents must show a certain originality (there is no protection of the selection and/ or the arrangement that is logical and therefore the obvious choice). The owner of the copyright relating to a database is the natural person, or group of natural persons, who created the database. However, it is important to note that

where the legislation of the EU Member States permits, another legal person may be designated as the database right holder. Under Belgian law, the employer has been designated as the database right holder with respect to databases that are made in the non-cultural sector by one, or more, employees during the exercise of their work or following instructions given by the employer.

- All of the EU Member States provide rights for the maker of a database, which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents, to prevent extraction and/or re-utilization of the whole, or of a substantial part (evaluated qualitatively and/or quantitatively), of the contents of that database. This 'sui generis' right applies irrespective of the eligibility of the database (structure) for protection by copyright or by other rights. Moreover, it applies irrespective of eligibility of the contents (e.g. pictures) of that database, for protection by copyright or by other rights. The proprietor of the 'sui generis' right is the maker of a database (i.e. the person who takes the initiative and the risk of investing). This excludes employees and subcontractors as holders of the given right. No formalities are required for a database to become eligible for the given protection. With respect to the duration of the 'sui generis' protection, the right runs from the date of completion of the making of the database and expires 15 years from January 1 of the year following the date of completion. Any substantial change (evaluated qualitatively or quantitatively) to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations which would result in the database being considered a substantial new investment (again evaluated qualitatively or quantitatively), shall qualify the database resulting from that investment for its own 15-year term of protection. The proprietor of the 'sui generis' right can therefore organize some kind of eternal protection for the database.

Trade Secrets, Confidential Information and Special Know-how

How are trade secrets, confidential information and special know-how protected?

Generally speaking, trade secrets, confidential information and special know-how are not considered intellectual property. However, they are granted some protection. A party seeking to protect such information must look at other areas of legislation: contract and labor law, fair trade practices legislation and criminal law. The protection available to the holder of such information is determined by the nature of the infringement. An employee who violates the obligation of confidentiality, included in labor law, risks immediate dismissal, paying damages to his employer and, if it involves fraud, criminal prosecution. When the beneficiary of the know-how is a third party, a disclosure of the know-how can be avoided with a confidentiality agreement. If there is no contractual provision to protect the rights, the damaged party can seek remedy under either the Fair Trade Practices Act or the Civil Code. The harmful activity can be stopped by court order and/or monetary damages can be awarded.

Enforcement of intellectual property richts in Belgium

Above, we have commented on the various types of intellectual property rights, how these rights are obtained and what protection is granted.

Another question, however, is how these rights can be enforced against an (alleged) infringer in Belgium?

The various Belgian Intellectual Property Laws, the International Treaties, valid in Belgium, and the Belgian Code of Civil Procedure, all contain provisions allowing the proprietor of an intellectual property right to request the Belgian Court to grant various enforcement measures.

Examples are:

- Measures relating to the gathering and protection of evidence (such as the unilateral appointment by the Court of an expert with a mission to ((amongst others)) describe the alleged infringing goods);

- Provisional and precautionary measures (such as a Court order to provisionally stop the commercialization of the alleged infringing goods, under a penalty);
- Corrective measures (such as a recall from the channels of commerce);
- Damages.
- Apart from those (civil) measures, the Belgian laws also provide for penal sanctions (fines and even imprisonment) for certain specific infringements (e.g. malicious or fraudulent copyright infringement).

Environmental permits

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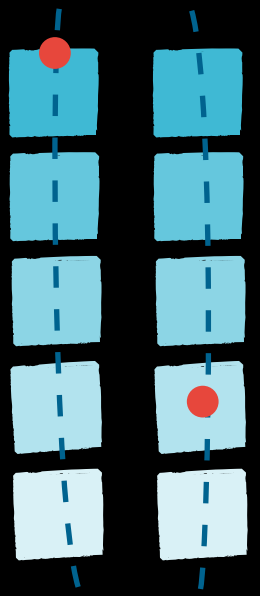

Investors setting up a business in Flanders need to obtain the necessary permits and ensure compliance with environmental law.
Environmental regulation in Belgium is primarily the responsibility of each region, although the Federal Government does retain authority over certain areas such as product standards, waste shipments, protection of the marine environment and ionizing radiation.
It is important to know that the Flemish Regional Government and the Belgian Federal Government must comply with EU regulations and standards on this subject.
This section provides a general outline of regulations in the Flemish Region including environmental permits, building permits, soil restoration and the disposal of packaging waste.

Environmental Permits

What activities require environmental permits?

A permit is required for a number of specified activities.
A classification has been established, based on how the activity affects the environment.

- Category I

This category includes truly hazardous activities such as the production of pesticides. For these activities you must obtain a permit from the provincial authorities. After an approval procedure involving advice from several specialist government agencies, the provincial authorities with jurisdiction over the operation site will decide if, and under what conditions, the permit can be authorized. The approval procedure does involve a prior investigation of the environmental impact of the activity.

- Category II

This category includes activities that are deemed less harmful to the environment. For these activities a permit must be obtained prior to the start of operations.
The approval procedure is similar to that applying to category I activities.

Example:

- Abattoirs and privately-owned slaughterhouses for poultry and rabbits that can handle 100 to 1,000 animals a day.
- Storage facilities for liquids with a flash point above 100°C,

except those meant for seaport areas and ports with a holding capacity of over 50,000 liters up to 5,000,000 liters.

- Category III

This category includes activities deemed to have "limited" effects on the environment. Such activities require only prior notification to the municipal authorities of the site where the activities will be carried out.

Example:

- Storage facilities for textile goods with a capacity of over 10 tons.
- Storage facilities for liquids with a flash point above 100°C, except those meant for seaport areas and ports with a holding capacity of over 200 liters up to 50,000 liters.

What is the approval procedure?

The approval procedure contains an assessment of the potential impact on the environment such as noise, air and water pollution, waste disposal and prevention of major accidents. Strict time limits are set for the different steps of the approval procedure. A similar or simplified procedure must be followed should you wish to change activities already permitted.

Obtaining Environmental Permits

- Category I

What is a Category I environmental permit?

A Category I permit determines:

- The specific operating conditions;
- The period of validity (up to 20 years);
- The period of time in which the activities will be started (maximum of three years).

How is the permit obtained?

Obtaining a Category I permit involves the following seven stages:

- Stage 1 • Date X

The applicant files a request for an environmental permit with the provincial authorities.

Important: For certain listed categories of activities the request needs to be accompanied by an environmental impact assessment or a "safety report", which can take at least two months.

- Stage 2 • Date X + max. 14 days

The applicant receives notification that the request is accepted and complete.
Note: This notification starts the approval procedure.

- Stage 3 • The request is published.
- Stage 4 • The appropriate authorities give their advice.
- Stage 5 • Date X + max. 14 days + max. 4 months

The provincial authorities decide whether the permit is granted. The absence of a decision within the required time limit equals a negative decision.
Important: An extension by two months is possible.

- Stage 6 • Date X + max. 14 days + max. 4 months + max. 10 days = date Y

The decision is published.

- Stage 7 • Date Y + max. 30 days

All interested parties can lodge an appeal with the Flemish Minister of the Environment.

- Category II

What is a Category II environmental permit?

A Category II permit determines:

- The specific operating conditions;
- The period of validity (up to 20 years);
- The period of time in which the activities will be started (maximum of three years).

How is the permit obtained?

Obtaining a Category II permit involves the following seven stages:

- Stage 1 • Date X

The applicant files a request for an environmental permit with the municipal authorities.

- Stage 2 • Date X + max. 14 days

The applicant receives notification that the request is accepted and complete.
Note: This notification starts the approval procedure.

- Stage 3 • The request is published.
- Stage 4 • The appropriate authorities give their advice.
- Stage 5 • Date X + max. 14 days + max. 3 months

The municipal authorities decide whether the permit is granted. The absence of a decision within the required time limit equals a negative decision.
Important: An extension by one and a half months is possible.

- Stage 6 • Date X + max. 14 days + max. 3 months + max. 10 days = date Y

The decision is published.

- Stage 7 • Date Y + max. 30 days

All interested parties can lodge an appeal with the municipal authorities.

- Category III

This procedure is limited to notification of the intended activities to the municipal authorities prior to the start of the activities.

Where can the operating conditions be found?

The operating conditions (of the Decree concerning Environmental Licences) can be found at http://www.emis.vito.be/wet_ENG_navigator/

Building Permits

What is a building permit and when is it needed?

Most construction, reconstruction, demolition and renovation works relating to buildings require a building permit. This is also true for building parking lots or cutting down trees. Minor changes to existing buildings and minor construction projects are generally exempt.
If the proposed activity also requires an environmental permit (or the reporting of it), the validity of the building permit will be suspended until an environmental permit has been obtained or the activity has been reported. The opposite is also true.
The official name of a building permit in Dutch is "stedenbouwkundige vergunning", but it is also known as a "bouwvergunning". You must apply for the building permit at the city or town hall of your property investment location. Due to its rather complex nature, the application will be best prepared by the architect.

What is the procedure for obtaining a building permit?

1. At city/town level:

- You will get an immediate written reply at the office window if you hand over your application at the city or town hall. For applications submitted by registered delivery, you will be sent an acknowledgement five (5) days after its receipt.
- If necessary, a public enquiry will be held, as well as a consultation with other public authorities.
- The mayor and aldermen will consider the request and decide within 75 days. Appeals can be lodged against the judgment with the Provincial Council of Deputies (Bestendige Deputatie).
- A reply must be issued within 75 days after the application, or a maximum of 105 days if a public enquiry is necessary.

2. At provincial level (appeal level):

- Within 30 days after receiving the judgment you have the right to lodge an appeal with the Provincial Council of Deputies (Bestendige Deputatie), after which you will receive a reply within 60 days (75 days if a hearing is needed).
- If the permit is approved and the Flemish Government does

not suspend it within 20 days, the permit can be used.
- If there is no answer within 75 days then the city decision remains valid, or there is the possibility of a reminder by the applicant. If there is no answer to the reminder within 35 days, then the permit is approved, provided there is no suspension by the Flemish Government within 20 days.

3. At the Flanders Regional level (control level):

- If the suspension is not honored you can lodge an appeal with the Flanders Region Government, Koning Albert II laan 19 bus 10, 1210 Brussels. The Minister will reply within 60 days (75 days if a hearing is needed).
- The suspension must be confirmed by the Government of Flanders within 40 days of the announcement of the suspension.
- If there is no answer from the Flemish Government after 40 days the permit can be used.

Assistance

1.Urban Development Statement 1 (stedenbouwkundig uittreksel):

- This provides information on the planning and permit status/history of the plot of land.
- To obtain it, apply at the city/town hall of the property investment location.
- In cases involving the sale of land/building this is provided by the notary to the buyer. In other cases it is not compulsory but is highly recommended.

2. Urban Development Statement 2:

- This provides advice on the possibility of receiving a building permit.
- To obtain it, apply at the city/town hall of the property investment location.
- A positive answer is valid for a period of six months.
- Useful in saving unnecessary costs involved in the application for a building permit.

It is not compulsory but is highly recommended.

Soil Restoration

What are the regulations regarding polluted soil?

The main objectives of the Decree on soil remediation and soil protection of 27 October 2006 are the prevention of new soil pollution and the remediation of historical soil pollution.

Based on the soil remediation Decree of 1995, the new Decree further develops its guidelines.
Its key points are:

- The adjustment and refinement of a number of existing guidelines;
- The simplification, refinement and clarification of existing procedures and terms;
- A number of new guidelines.

With the Flemish regulation on soil remediation and soil protection (Vlarebo for short) approved on 14 December 2007 and published on 22 April 2008 [erratum published on 19 May 2008], the Flemish Region now has new and comprehensive soil legislation. The new soil legislation entered into force on 1 June 2008. Vlarebo implements the provisions of the soil decree.

When should the soil be cleaned?

- In the case of **new soil contamination** a descriptive soil investigation shall be carried out immediately if there are clear indications that the soil contamination exceeds or threatens to exceed the soil remediation standards. If the descripitive soil investigation shows that the soil remediation standards have been exceeded, soil remediation shall be initiated without delay.
- On a land with **historical soil contamination** a descriptive soil investigation shall be carried out when clear indications of severe soil contamination exist. Soil remediation shall be carried out when a descriptive soil investigation indicates the presence of severe soil contamination.
- If, in the case of **mixed soil contamination**, a distinction can be made between new soil contamination and historical soil contamination, the respective provisions for each kind of soil contamination shall be applied. If no distinction can be made a division will be made, as accurately as possible, of the soil contamination into a part which in all

reasonableness can be considered new soil contamination and a part which in all reasonableness can be considered historical soil contamination. On the basis of a motivated proposal by the soil remediation expert in his/her soil investigation rapport, OVAM shall decide on the actual division. Each part shall be treated in accordance with the provisions which are applicable for the kind of soil contamination..

Who is responsible for the clean-up?

A graduated system is used to determine which party is required to remediate the land. If on the land where soil contamination originated installations are present that are under a permit or notification obligation according to the decree of 28 June 1985 on the environmental permit the operator as meant in the aforementioned decree has the obligation to carry out a descriptive soil investigation or soil remediation.

In the absence of an operator, or if the operator has been released from the obligation to remediate, the user of the land where the soil contamination originated will be obliged to remediate.

But what happens if there is no user or the user has been released from the obligation to remediate? In this case, the obligation to remediate ultimately rests with the owner of the land where the soil contamination originated. If the owner also demonstrates that they comply with the exoneration conditions, OVAM can act ex-officio and recover the costs from the liable party.

What is the procedure for soil restoration?

The soil Decree divides the procedure into two stages:

1. The exploratory and descriptive soil investigation.
2. The soil remediation

An exploratory soil investigation determines if there are clear indications of the presence of soil contamination. A descriptive soil investigation is carried out to establish the severity of soil contamination. If OVAM considers that this investigation shows that the soil contamination exceeds the soil remediation standards of severe soil contamination, soil remediation shall be carried out (stage two). Under this process the soil contamination is dealt with on a step by step basis. The party required to restore the land must then:

1. Draw up a soil remediation project;
2. Carry out soil remediation works;
3. Ensure follow-up.

These steps must be carried out by an accredited soil remediation expert and on the basis of our standard procedures.

What is the land information register?

OVAM manages a Land Information Register in which information about the soil quality of land in Flanders is recorded. The former decree made reference to the register of polluted soils. This term has now been replaced by a **broader and more accurate term**: the Land Information Register (Grondeninformatieregister). The fact that a specific piece of land is recorded in this register does **not mean per se that the land is polluted or that soil remediation (clean-up) is required**.

What happens if property ownership is transferred?

In Flanders no land may be transferred without a soil certificate. In principle, and as mentioned, as the buyer you have nothing to do. **The seller of the land must apply to OVAM for the soil certificate** (**usually having this done by a public notary).**

A soil certificate contains all information known by OVAM about a certain plot of land. All the parties are then fully aware of the situation.

Is the land you are transferring **non high-risk land**? Ask OVAM for a soil certificate per cadastral parcel. Do this before you conclude the transfer agreement. You can obtain the application form from your local authority, a public notary or from the www.ovam.be website. You will receive the certificate within a month of application.

Are you transferring **high-risk land**? You can inform OVAM of this fact using the standard notification form for transfers. You need to appoint an accredited land remediation expert who carries out a compulsory exploratory soil investigation. Report

the results to OVAM and also request a soil certificate. You will receive a reply from OVAM within two months.

What is OVAM?

OVAM is the competent authority for soil remediation.

Packaging Waste

What are the requirements regarding packaging waste?

A take-back obligation was introduced in 1997. This requirement stipulates that certain percentages of packaging waste must be recycled and recovered. (Recovery = recycling + energy recovery.)

The new cooperation agreement of 4 November 2008 on the prevention and management of packaging waste became effective on 1 January 2009. This new cooperation agreement replaces the cooperation agreement of 30 May 1996 and introduces some important modifications in relation to the previous cooperation agreement, without threatening the continuity of the legislation however.

Its contents can be summarized as follows:

- A new type of "packaging responsibility"
- New percentages of recycling and useful application
- A new regulation for the general prevention plan
- A minimum threshold for the take-back obligation
- A new obligation for the recognized organizations responsible for household packaging waste
- A new monitoring procedure

Can recovery and recycling be delegated?

The company can either take back and recover/recycle its own packaging (in most cases with the help of a licensed waste treatment company), or it can delegate this to accredited organizations:

- Fost Plus for household packaging waste;
- VAL-I-PAC for non-household packaging waste.

The principal advantage in delegating this obligation is that the accredited organization is more likely to meet the recycling and re-use quota than an individual company (largely because of economies of scale).

What happens if a company fails to meet its obligations?

If a company fails to meet the legal recovery quota it can be punished by law (imprisonment and fines).

Where can further information be found?

More information concerning packaging waste can be found at www.ivcie.be and at www.ovam.be. The sites of the accredited organizations are also worth visiting: www.fostplus.be and www.valipac.be.

Immigration of highly qualified foreign professionals

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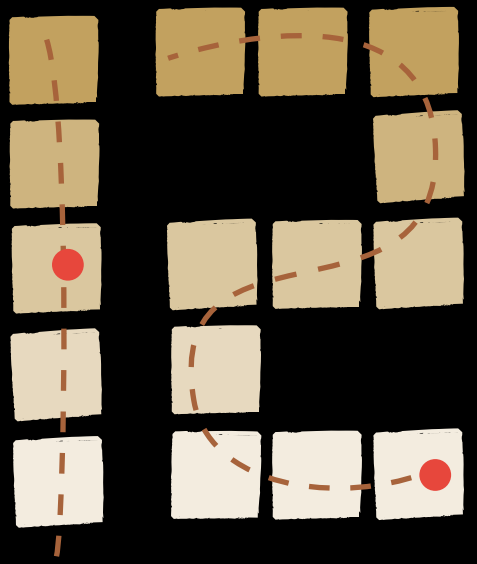


Employment authorization

Most foreign nationals coming over to work in Belgium need an authorization before they start their employment in Belgium. A distinction needs to be made between “employees” and “self-employed individuals”.

For employees

When is a work permit required?

An employer may not employ a foreign national in Belgium unless they first obtain permission from the relevant competent immigration authorities.
Certain categories of employees are exempt from the requirement to hold a work permit, such as:

- Nationals of a Member State of the European Economic Area (EEA) and their spouses, their descendants aged under 21 years or who are still dependent on them, their dependent relatives in the ascending line and their spouses (with the exception of nationals of Bulgaria and Romania).
- The spouse of a Belgian national and their descendants aged under 21 or who are dependent on them, their dependent relatives in the ascending line and their spouses.
- Managers and executives who are employed through a local employment contract with a European Headquarter in Belgium.
- Foreign nationals authorized or admitted to live in Belgium for an unlimited period of time.
- Some categories of trainees who are assigned intra-group for a period of no more than three (3) months.
- Students who are staying legally in Belgium can work without a work permit during school holidays (the Christmas holidays, the Easter holidays and the summer holidays).
- Students on training courses that are mandatory as part of their studies in Belgium.

What are the rules for issuing a work permit?

In general, work permits are only issued if it is absolutely impossible to find a suitable local employee in the labor market within a reasonable time.
In addition, such permits are only issued to nationals of countries that have signed international treaties about the employment of employees. However, these rules do not apply to employees who can be considered highly qualified employees and to executives.
The request to employ a foreign citizen and to obtain a work permit for him or her must be made by the employer in Belgium. If the employer is not established in Belgium, they should appoint a person or company domiciled in Belgium who will make the application on their behalf and will carry out all steps and formalities.
A work permit will normally be issued after about four (4) weeks (although it can take longer depending on the region and the time - holidays etc).

Please note that permission to employ a foreign national will be granted by the authorities by returning a special form to the employer. The issuing of permission to employ a foreign employee automatically entails the issuing of a type B work permit to the foreign employee.
The type B work permit is always linked to a specific job with one employer. If the foreign employee gets another job within the same company or starts working for another company, a new type B work permit needs to be applied for.
The documents that need to be attached to the work permit application file are determined by the employment status of the employee in Belgium (whether he or she is a seconded employee, exempt from Belgian social security or a local employee and subject to Belgian social security).
Finally, special attention should be paid to the salary the employee in question will earn. We would like to draw your attention to the fact that a distinction is made between highly qualified foreign personnel and executives:

- Highly qualified foreign employees, whose employment in Belgium is limited to four (4) years (renewable for another 4-year period under certain conditions), will be entitled to work permits, even if suitable labor is available in Belgium to fill the vacancy, as long as their gross salary exceeds EUR 35,638 per year;
- Executives fulfilling a leading function in a Belgian company will be entitled to work permits on condition that their annual gross salary exceeds EUR 59,460. These amounts are linked to the conventional salaries index and will be reviewed each year. The salary levels referred to are applicable with effect from 1 January 2009.

For self-employed individuals

When is a professional card required?

All non-EU nationals (except EEA nationals, EU-nationals and citizens of Iceland, Norway and Liechtenstein) who wish to

undertake self-employed work in Belgium need a professional card if:

- They intend to reside in Belgium to carry out a lucrative independent trade or profession;
- They are appointed as a (self-employed) director in a company incorporated in Belgium (N.V./S.A. or B.V.B.A./S.C.R.L.);
- They hold a power of attorney to operate a branch of a company incorporated in another country.

Therefore, if a foreign national wishes to undertake self-employed work in Belgium, he or she has to obtain a professional card authorizing him or her to do so either as an ordinary person, a legal entity or as a representative of a company or association (regardless of him/her being paid/remunerated or not for this activity).

What are the rules for issuing a professional card?

Applications for professional cards can be lodged either with the Belgian diplomatic or consular post in the country of the last residence of the person concerned or with the local authorities of the (Belgian) municipality if the applicant has already obtained a Belgian resident card and is already legally residing in Belgium at the time of the professional card application.
In cases where a professional card will have to be applied for the person concerned without him or her having a Belgian residence card, the application should be made with the Belgian Embassy in the place of residence.
The Belgian Embassy overseas will then transfer the file to the authorities in Belgium.
Generally, the application for a professional card through the Belgian Embassy takes quite a long time (up to five (5) months) and usually takes much longer than when an application for a professional card is made directly with the authorities in Belgium. However, in the latter case, one must be registered in Belgium.
The card is valid for a maximum of five years and defines precisely the activity that the individual is authorized to practice.

It should be mentioned that the application for a professional card is not the only requirement to be met before a self-employed person can start his or her work in Belgium. Access to the profession is essential in order to be registered with the Crossroad Bank for Enterprises as a self-employed person. Such access can be gained by submitting evidence of your basic management knowledge to an authorized one-stop business shop. Furthermore, a person wishing to operate in one of the 42 regulated professions must also provide evidence of specific professional skills.

Application for a temporary residence permit

Once in possession of the work permit or professional card, the foreign national should apply for a visa with the competent Belgian consular authorities of the place of residence abroad.
For a period of stay of less than 90 days in Belgium, a type C visa is generally required (although citizens of some countries are visa exempted for such short periods).
For a period of stay of more than 90 days, a type D visa should be applied for.
Generally, the hereafter mentioned documents are required by the Belgian Embassy/Consulate to issue a type D visa:

- A work permit or professional card;
- An original certificate of good conduct covering the last five (5) years issued by the police department of the applicant's place of residence;
- A valid passport;
- A medical certificate;
- 3 identity photographs;
- 2 or 3 visa application forms duly completed and signed. These forms can be obtained at the Embassy and can also be completed there.

The person should check with the relevant Embassy/Consulate whether supplementary documents are required in order to obtain the visa.
Instead of applying for the type D visa, the holders of a work permit or professional card can apply for a type C visa and submit a number of additional documents upon arrival in Belgium.

Registration with a Belgian municipality – obtaining a Belgian residence card

Upon arrival in Belgium, the foreign national should report to the city authorities in his or her place of residence in Belgium (usually within 8 days after his or her arrival) in order to be entered in the register of foreigners of the municipality and to

obtain a Belgian residence card (the so-called Electronic ID card). To this end the city authorities will ask for the passport with visa stamp, the work permit and lease contract in Belgium (and a certificate of good conduct if the foreign national came over on the basis of a type C visa). Depending on the municipality, supplementary documents may be requested.
In principle, the Belgian residence card is valid for a period of one (1) year and can be renewed each year on the basis of an extended work permit or professional card.

Mandatory LIMOSA-declaration

In 2006, the Belgian Council of Ministers approved an e-government project relating to social security. The project aims to modernize the management of the Belgian social security system and the legal framework for monitoring and controlling the employment of foreign nationals (called LIMOSA).
The system, which came into effect on 1 April 2007, consists of:

- A mandatory declaration for each foreign national seconded employee and all foreign self-employed individuals working in Belgium (comparable with the DIMONA-declaration for employees who are subject to the Belgian social security system);
- An information exchange system between the different Regions (competent for applications for work permits), the Ministry of Middle Classes (for professional cards) and the Ministry of Internal Affairs (for residence permits). The information will be available and exchangeable between the different authorities.

In practice, the implementation of LIMOSA ensures that each foreign employee who is assigned to Belgium without being subject to Belgian social security (even on a temporary and/or partial basis) and all foreign self-employed individuals who are working in Belgium without paying Belgian social security contributions need to be declared to the Belgian social security authorities before they start working in Belgium.

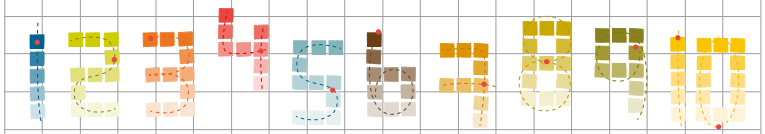
When filing the Limosa declaration, the employee's name, contract details, place of employment, type of employment (full or part time), the period of assignment and other information will need to be provided.

Exemptions are created for, amongst others, short term assignees (business trips in limited circles up to 20 consecutive days with a limit of 60 activity days per calendar year) and certain categories of trainees.

The Limosa declaration is a legal requirement. Non-compliance can result in penal or administrative sanctions. Both the employer, their representative or agent can be punished.

The person for whom (or on whose premises) the work is carried out in Belgium can also be prosecuted if they fail to declare the absence of a Limosa declaration to the government! In other words, the Belgian "user"/principal can be held liable for non-compliance of contractors who employ foreign nationals on the premises of the "user".

Allow us to give you **10 different reasons** why Flanders is Europe's ultimate location for your business activities. 10 **Crucial arguments** which are **the base** of all sound investment decisions. You will be surprised to see the wide range of advantages our region has **to offer you**...



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