

# Setting up your Business in Belgium

## Issues to consider



Sharing its capital within the European Union, Belgium is one of the smaller European countries in terms of size. Nevertheless, Belgium is a very dynamic country with multilingual, multicultural influences.

Belgian (regional) authorities promote foreign investment: various attractive tax regimes and investment incentives exist to facilitate and attract foreign investment to Belgium.

However, there are a number of issues which you must consider when you are looking to set up your business in Belgium. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

### What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

The Belgian government has not set up any specific law governing or limiting the creation (or the purchase) of a Belgian company by foreign persons. In this respect, there are no rules requiring Belgian participation in the capital or management of the company. It does not require special government authorization (except special regulations e.g. banks,...).

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

### Establishment (a branch of your overseas business)

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the Belgian operations
- If have a permanent establishment in Belgium then profits from this PE are liable to Belgian Corporation tax
- The PE must file **parent company accounts**, prepared under Belgian Company Law, at National Bank public insight, even if these are not made publically available overseas

In order to be able to carry on business, an entrepreneur has to register with the "BCE/KBO" (Banque Carrefour des Entreprises/Kruispuntbank Ondernemingen), which is a body responsible for registering business activities in Belgium. Registration is required in order to obtain a VAT number.

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### Limited Company:

Limited liability companies are permitted in Belgium and can be incorporated in the following forms:

- Public limited liability company (NV/SA);
- Private limited liability company (BVBA/SPRL)

**The BVBA/SPRL** is considered a **private** limited liability company:

- Its shares are not readily negotiable since new shareholders must be accepted by the general meeting. A BVBA/SPRL is founded by at least one members, who may be natural or legal persons.
- A BVBA/SPRL requires a minimum starting capital of EUR 18.550, of which EUR 6.200 – and EUR 12.400 in the case of only one associate – needs to be paid up at the time of incorporation. Furthermore, one-fifth of each share has to be fully paid up upon incorporation;
- The BVBA/SPRL is managed by one or more directors, who may be individuals or companies.
- the directors do not need to be Belgian residents

**An NV/SA** is designed to be a **public** limited liability company.

- it is founded by at least two members, who may be individuals or companies.
- It requires a minimum starting capital of EUR 61.500, which must be wholly paid up. Furthermore, one-fourth of the contributions in cash or in kind represented by the shares has to be fully paid up upon incorporation;
- The board of directors may consist of just three (or two in certain cases) directors who may be individuals or companies;
- the directors do not need to be Belgian residents

### Limited Liability Partnership:

Co-operative society with limited liability (CVBA/SCRL).

- Members (partners) have limited liability
- A limited liability cooperative can only be formed by three or more persons, who may be natural or legal persons.
- The share capital of a limited cooperative consists of fixed and variable parts. The fixed part may not be less than EUR 18.550, of which at least EUR 6.200 must be paid up upon incorporation;
- One-fourth of each share has to be fully paid up upon incorporation.
- The transfer of shares is strictly regulated

### How much Corporation Tax will the business pay?

Current Corporation Tax rates in [Country] are:

In 2017, the standard rate of corporate tax is 33%, increased to 33.99 % by a 3% austerity surcharge.

A measure of progressive reduction in the tax rate to 23, 24 or 25% by 2020 is still being discussed by the Government.

Profits below EUR 322.500 are subject to lower small-companies rates as follows:

Band of taxable profits (EUR) Rate (incl. austerity surcharge)

<b>Taxable incomes</b>	<b>Rate</b>
from 1 to 25 000 EUR	24,98 %
from 25 000 to 90 000 EUR	31,93 %
from 90 000 à 322 500 EUR	35,54 %

Please note that only entities with legal personality are subject to corporate income tax.

Corporate tax is levied on Belgian-resident companies. A resident company has legal personality, is engaged in business or profit-making activities and has its tax residence in Belgium. The tax residence of a company is defined as its registered office, its principal establishment or its seat of management or administration, i.e. the effective seat of its day-to-day and policy management.

The taxable income of a company results from (1) the gross income derived from its business operations, less its business expenses and (2) the increase or decrease in the net value of its assets over a given taxable period.

The valuation rules for tax purposes may differ from the accounting rules.

The tax basis so determined is then reduced among others by:

- Foreign profits exempt according to double taxation treaties;
- The dividends-received deduction;
- The deduction for patent income;
- The notional interest deduction (a decrease to 0% is under review);
- Previous losses;
- The deduction for investment.

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### What if we use [Country] to set up our holding company?

Belgium is particularly attractive as a location for a holding company because of the possibility of deducting interest expenses (including notional interest expenses), combined with a 95 % (an increase to 100% is under review) deduction for dividends received and a tax exemption for capital gains realized on shares.

#### Tax status

Holding companies are subject to the common corporate income tax rate of 33.99 %. The rules of taxation relating to the ownership of shares apply equally to "pure" holding companies as to 'operating companies' investing in shares. No taxes are levied on the net worth of enterprises in Belgium.

#### Dividend Taxation

Based on the dividend received deduction, 95 % (an increase to 100% is under review) of the dividends received are deducted from the taxable income.

This deduction is only applicable to the extent that there is sufficient taxable income available, from whichever source or nature, from which the deduction can be made. Thus, if the holding company has losses, or insufficient taxable income, all or part of the 95 % deduction may be lost. In addition, dividends are not deductible from a number of non-deductible expenses.

### What if we make cross-border transactions between group companies?

Belgium follows internationally recognized **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

Three forms of transfer pricing rules apply: recapture of profits, disallowance of deductions and disregarding of the transfer of certain assets.

Affiliated companies are required to follow the arm's length principle on their internal transactions. Indeed, profits may be recaptured where conditions are imposed between two companies in their commercial or financial relations which differ from those that would be made between independent enterprises. There are no specific rules saying how to determine the market price. In principle the guidelines of the OECD Transfer Pricing Report must be followed.

In addition, any abnormal or gratuitous advantage granted by a Belgian-resident company to non-resident related persons or to persons situated in a tax haven must be added to the Belgian company's taxable income.

Moreover, tax losses (both of the current year and losses brought forward) and other tax credits cannot be offset against that part of the taxable profits resulting from abnormal or gratuitous advantages received from a Belgian or a foreign related company.

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Secondly, interest, fees and royalties paid to a non-resident holding company or any other recipient in a tax haven may be disallowed as deductible expenses for income tax purposes unless the taxpayer proves that the transaction is real and genuine and that the payments are not excessive.

Finally, the transfer of certain assets (bonds, claims, money etc.) to a holding company or any other person in a tax haven may be disregarded by the tax authorities, except if the taxpayer shows that the transaction corresponds to legitimate business needs or that he received an actual consideration producing an amount of income subject in Belgium to a normal tax burden.

### **What Employment Taxes and Social Security will need to be paid?**

If an individual is resident in Belgium then they are subject to Belgian tax laws. Belgian residents' individuals are subject to personal income tax on their total net worldwide income. Total income is the sum of income from immovable properties, movable assets, earned income, and miscellaneous income, which includes various items that do not fall under the other categories (some capital gains on real estate or profits from miscellaneous incomes). Each type of income is subject to specific rules.

A Belgian resident is a person whose permanent domicile or customary residence, or whose "center of wealth administration" is located in Belgium. In this respect tax residence is a question of fact. The tax residence of married persons (or legal cohabitants) is where their household is established.

In addition to their pay, an employer has to partially/totally pay social security contributions for his employees. Unless otherwise stated in an international agreement (whether multilateral – such as European Regulation 883/2004 – or bilateral), salaried employees working in Belgium for an employer that is established in Belgium or has a place of business (branch) in Belgium will in principle be subject to the Belgian social security scheme. The social security system for wage and salary-earners covers: sickness and disability benefits, unemployment benefit, old-age and survivors' benefits, family allowances and annual vacations.

We would advise any new entrant to Belgium or person who spends time working in Belgium to take professional advice to determine whether they are Belgian tax resident.

**Current Personal Income Tax rates in [Country] are:**



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Band of income in EUR	Tax rate (%)
0 – 10.860,00	25
10.860,00 – 12.470,00	30
12.470,00 – 20.780,00	40
20.780,00 EUR – 38.080,00	45
Up to 38.080,00	50

(NB: rates are for the tax year to 12/31/2016)

Employers and employees also have to pay Belgian social security, which is called 'National Social Security Office' (ONSS/RSZ):

### Current Social Security rates are:

Employer	+/- 33% of the gross salary of the employee
Employee	13,07% of 100% of the gross salary (withheld by the employer)
Worker	13,07% of 108% of the gross salary (withheld by the employer)

(NB: rates are for the tax year to 12/31/2016)

It is the employers' legal responsibility to pay over employee's tax and social security deductions to the Belgian tax authorities. The employer is responsible to collect and pay those Social Security contributions.

Belgium has a Reciprocal Agreement with the USA, EU countries and many others whereby when an overseas national of those countries is seconded to Belgium for a defined period of time and continues to pay social security in their home country, then the employer and employee are exempt from paying Belgian social security.

### What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made, the standard rate of which is 21%. In principle, a VAT taxable person who performs taxable transactions in Belgium is required to register for VAT, (possibly subject to simplification measures). There is no threshold below which a VAT taxable person is allowed not to register.

However, Belgium has set up a VAT exemption regime called 'franchise': if your annual turnover does not exceed 25.000 EUR in any 12 months then you can opt for this specific regime: you do not have to file any VAT return but you have no right to deduct the VAT on purchases.

There are three types of supply

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- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT
- Outside the scope – not in the Belgian VAT system

Based on the above, a non-resident company has to register for VAT in Belgium when it has VAT-able activities in Belgium for which it is liable to pay the VAT.

This activity can be:

- Belgian domestic sales of goods to not VAT-identified entities (including individuals);
- On distance sales of goods, i.e. mail order sales to Belgian individuals, provided the annual threshold of 35,000 Euro sales is exceeded;
- Intra-community sales of goods: sales where goods are dispatched from Belgium to other EU member states;
- Intra-community acquisitions of goods: bringing goods from other EU member states into Belgium
- Imports of goods: bringing goods from outside the EU into Belgium;
- Supplies of services which are located in Belgium according to the VAT rules. These are often locally performed services. Sales of intangible services to Belgian taxable entities is in principle subject to reverse-charge (and thus no VAT registration is required).

Besides the above mentioned threshold of 35,000 Euro for the specific case of distance sales, there is no 'de minimus' threshold: regardless their size the above transactions usually require a non-established company to register in Belgium for VAT purposes.

### **Can we provide Share option plans to our staff?**

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

Belgium has set-up a share option plan which give tax benefits to employees and employers.

This is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Belgium.

### **How else can we compensate our employees?**





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Belgium has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, company car, private medical insurance, life and disability cover are now commonplace benefits provided by many Belgian businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to 'spend' their benefits allowance; which can range from 'purchasing' additional holiday entitlement to obtaining full family medical cover and on net allowances for specific expenses.

**To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or [email](#) us directly.**

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