

Setting up your Business in Belgium- Update 2018- Issues to consider

Sharing its capital with 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. In order to be competitive on an international context, Belgian authorities have decided to set up a Tax Reform (called “tax shift”) which implies a reduction of the work costs and a reduction of the corporate tax level. This reform has begun in 2015 by reducing the costs on work. Since 2017, the reform has been focused on a decrease of the corporate tax rates and abolishing a number of complex deductions.

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:

- Establishment (a branch of your overseas business)
 - This is not a separate legal entity but an extension of the overseas parent company
 - There is no limited liability or ring-fencing of the Belgian operations
 - If you have a permanent establishment in Belgium then profits from this PE are liable to Belgian Corporation tax
 - You must file parent company accounts, prepared under Belgian Company Law, at National Bank for public insight, even if these are not made publicly 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.

Limited Company¹:

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

¹ Please be aware that a reform of the corporate law is ongoing which will involve modifications and limitation of corporate forms

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- Public limited liability company (NV/SA);
- Private limited liability company (BVBA/SPRL – in the future VBA/SRL)

The BVBA/SPRL is considered as 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 – or EUR 12.400 if the company has 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

How much Corporation Tax will the business pay?

In 2017 the Corporation Tax standard rate in Belgium was 33% (increased by an austerity surcharge of 3%). There were also reduced rates applicable under the respect of conditions.

Reduced rates were also applicable under certain conditions.

Belgium has always been at the forefront when it comes to the rate of corporate taxes. One of the main goals of the above-mentioned Reform was therefore lowering the tax rate for companies.

Reducing the corporate tax rate will be implemented in two phases:

- 1st fiscal year 2019 (revenues of 2018)
- 2nd fiscal year 2021 (revenues of 2021).

The standard rate for all companies will be lowered in two steps (FY 2019: 29%) to reach a flat rate of 25% (as from FY 2021). For certain SME companies an even lower rate (20%) is foreseen for the first 100K EUR profits as from FY 2019.

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The conditions to be able to benefit from this SME rate were also slightly modified:

- To be a SME company which means according to art. 15 of Company Law (not surpassing more than one of the following thresholds on a consolidated basis: 9Mio EUR turnover, 4.5Mio EUR balance sheet total, 50 employees)
- No financial fixed assets in excess of 50% of paid-in capital + taxed reserves
- No company shareholders in excess or equal to 50%
- Attributing 45K EUR in gross in salary to at least one manager (or a salary equal to the taxable base if lower then 45K)

In this respect in 2018, the standard rate of corporate tax is 29% (or 20% on the first 100.000 EUR of profits of a SME) , increased of 2% by an austerity surcharge.

This austerity surcharge will be cancelled as from the fiscal year 2021 (revenues of 2020).

Summary:

	2017	2018	2020
Standard rate	33%	29%	25%
Reduced rates	24,25% - 34,5%	-	-
PME/KMO rates	-	20%	20%
Austerity surcharge	3%	2%	0%
Effective rates	24,98% - 33,99%	29,58%/20,40%	25%/20%

Please note that only entities with legal personality are subject to corporate income tax. Taxable permanent establishments of an overseas entity are taxed in the non-resident corporate 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.

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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.

What if we use Belgium 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 100% 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.

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.

Belgian companies, including holding companies are also featured by a 'deduction for risk capital' or 'notional interest deduction' which is the major tax incentive to reinforce Belgium as an attractive location for local and international investors.

The notional interest deduction equals a percentage (based on the return on a 10-year state bond – maximum 3%) of the equity, determined according to Belgian tax law. This measure benefits small- to medium-sized enterprises (SMEs) and larger companies (national and international) by encouraging the strengthening of their equity.

Dividend Taxation

Based on the dividend received deduction, 100 % 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 100 % deduction may be postponed to the following years.

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 recognised 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

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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.

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.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Provision of management services
- Property rental charges
- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a "market" interest on loans

A business will need to prepare a Transfer Pricing Report proving the arm's length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm's length basis.

SME's are generally exempt from [Country's] transfer pricing regime, so only "large" entities need to undertake detailed TP analysis. A "large entity" for TP purposes is one with > 250 employees, or < 250 employees but Revenues > €50M and Gross Assets > €43M. [Summarise any TP requirements.]

However even if an entity is exempt from the [Country's] transfer pricing regime it may fall under the scrutiny of the other international tax jurisdictions where it transacts. There may also be other tax regulations which ensure transactions are undertaken at a commercial value.

As of 2020, it will be possible to file consolidated returns for corporate tax purposes in Belgium.

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

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Belgian residents' individuals are subject to personal income tax on their total net worldwide incomes. Total incomes are 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 (FY 2019 – revenues 2018) Personal Income Tax rates in Belgium are:

indexed amounts based on the previous				
from	0,00 €	to	12.990,00 €	25%
from	12.990,01 €	To	22.290,00 €	40%
from	22.290,01 €	To	39.660,00 €	45%
from	39.660,01 €	to		50%

(NB: rates for revenues 2018 – FY 2019)

Employers and employees also have to pay Belgian social security, which is called ONSS/RSZ:

Employer: 25% of the gross salary of the employee

Employee: 13,07% of the gross salary (withheld by the employer)

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.

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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 the “regime de la 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 but you have to be registered for VAT.

There are three types of supply

- 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

The supply of most types of goods and services in Belgium would be classed as Taxable supplies. However when these supplies are made to companies which are outside of Belgium advice needs to be sought as to what rate of VAT, if any, to use.

If a Belgian entity sells goods or provides services to its non EU parent then there is no VAT chargeable on this overseas supply, however on the basis that the supply would be VAT’able if made in Belgium then the entity will be able to reclaim all its input VAT.

There are also specific VAT regimes called “reverse charge regime” which implies that an abroad company performing a business in Belgium will not have to register for VAT purposes in Belgium.

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.

Those activities 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

In Belgium, it is also possible to have one VAT return for a group of companies.

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- 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.

In Belgium, it is also possible to file a consolidated VAT return for a group of companies.

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 plans 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?

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.

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