

Doing business in Belgium



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Foreword



The purpose of this guide is to provide an overview of doing business in Belgium. It is not intended to be comprehensive but is designed to inform investors of the issues that need to be considered when investing in Belgium. Wherever possible, information has been updated until December 2010.

Belgium has a strategic location in the heart of Europe, and serves as residence to the European Union and the North Atlantic Trade Organisation.

Internationalised and leading the world in per capita exports, it offers a well-educated and trained labour force, multi-lingual and strongly committed to high productivity and quality. Equipped with a powerful infrastructure and excellent transportation facilities, Belgium offers prime opportunities for those companies that want to locate their European headquarters in the centre of the market place.

PKF Belgium is one of the leading groups of accountants and auditors in Belgium who, based on business sector expertise and a commitment to work towards solutions, delivers in time quality advice. Inward investors will find a full range of services at their disposal. As a member of PKF International Ltd, a network of legally independent firms operating in over 125 countries worldwide, we are used to international reporting and are well positioned to serve global needs.

Details about our comprehensive range of services, our offices, and people to be contacted are included in this guide. Further information can also be found on our website, <http://www.pkf.be>, and our company brochure can be sent to you on simple demand (mail antwerpen@pkf.be) in the language of your choice (English, French or Dutch).

Do not hesitate to call us. We look forward to helping you build tomorrow's business.

Paul De Weerdt
PKF BELGIUM

The representatives of PKF in Belgium are member firms of the PKF International Limited network of legally independent firms and do not accept any responsibility or liability for the actions or inactions on the part of any other individual member firm or firms.

Our services for inward investors



Establishing a presence in Belgium, from a straightforward place of business or branch to the more complex joint-venture company or partnership, is a significant step for any business. You will want to focus on building a profitable business and maximising the return on your investment but will also have to deal with the many regulatory and administrative issues triggered by entering the Belgian market.

Why PKF?

The wide range of help that we can give you and the depth of our knowledge of the local business environment means that, with PKF as your guide, investing in Belgium is easier, safer and will give you better returns.

How should you structure your investment?

The way that your Belgian business or investment vehicle is structured and interacts with your non-Belgian interests will have a considerable impact on the costs and tax charges that it must face.

PKF has extensive experience of advising companies on the different entities and arrangements that can be used to set up a business in Belgium and can help you identify the most tax-efficient structure for your business. And when you want to take the profits from your investment we can advise on repatriation strategies or on a disposal.

What financial help is available?

There are many tax incentives and other forms of government-funded assistance available to inward investors. We can help with your business planning to ensure that you make the best use of the tax incentives and help you in obtaining grants by guiding your negotiations with the numerous grant-awarding bodies. You may also wish to raise other commercial or private business finance to enhance your investment and PKF can explain the options and help you find the right source of funds at the right price.

Who can help me with the paperwork?

Complying with the many regulations on Belgian business can be a significant drain on management time and errors can cause costs to escalate. Allowing us to support your business by providing cost-effective accounting, secretarial and business advisory services – ranging from helping you choose the right software to completing your VAT returns – gives you more time to focus on maximising the return on your investment.

Our Services

Legal services

The legal advisers of PKF provide advice and assistance in each legal aspect of doing business. Armed with flexibility and a no-nonsense approach, our legal experts help you find legal solutions that are “to the point” and tailored to your company. Our specific legal fields of expertise are company law including mergers and acquisitions (due diligence and contract drafting and/or negotiation), employment and social security law (individual employment law as well as dealings with syndicates and employee representative bodies) and the drafting, review and/or negotiation of various contracts (distribution, agency or production agreements, management or service agreements, sale of goods or lease agreements, etc.). Being used to working in a multidisciplinary environment and for various business sectors, our legal advisers are aware of the relevant tax aspects and of the broader spectrum of doing business.

Business support services

Any new business trading in Belgium will have a large number of tax and administrative requirements to meet in addition to internal accounting routines. We help inward investors to design, select and implement management information systems and accounting software to simplify and reduce administrative burdens. We also offer a fully out sourced accounting function that leaves your organisation free to focus on core business activities. We can also take on specific tasks, including production of statutory financial statements, management accounts, international reporting packs, budgets and forecasts, and VAT and tax administration.

Taxation

Changes in tax law and practice constantly create new tax-planning opportunities but also increase the burden of bureaucracy on individuals and businesses. We help businesses and individuals to unravel the complexities of the tax system, select a sensible strategy to maximize their profits after tax and take care of the tax returns and related administration.

VAT

The VAT team of PKF assists multiple kinds of businesses during the extension and performance of their activities in Belgium, and this on a continuous basis as well as on an ad-hoc basis. In order to meet the needs of today's businesses to the largest possible extent, the VAT team of PKF has been divided into a compliance cell and an advisory cell, closely working together. The compliance cell is specialised in the preparation of VAT returns, the representation of non-Belgian companies, the performance of VAT audits, the assistance during VAT inspections and the filing of VAT refund claims. The advisory cell from his side has an extensive experience in all VAT domains, with a specific knowledge of implementation of new VAT structures and VAT groups, optimisations in non-profit, public and immovable sector and ad-hoc advisory.

Assurance and advisory

All audits should provide assurance to users of accounts. Our partners and staff have amassed a wide range of knowledge, skill and experience working with large and small clients across a very broad range of industries and sectors.

They can bring these to bear on your business to ensure that you get the maximum value out of an audit, an advisory assignment or even a simple accounts preparation task.

Consultancy

We provide a wide range of consultancy services to clients, ranging from small private companies to central government. Whether helping organisations to establish corporate objectives or manage change, review IT systems or raise project finance, we give objective advice that delivers real benefits.

Grant advisory

Grants and other subsidised funding are available for both Belgian companies and inward investors from a wide range of Belgian and European sources, for projects that involve capital expenditure, product development and training. Through business planning, financial forecasts, application preparation and negotiation support, we advise companies both large and small and help them obtain the grant funding that their project needs.

Corporate recovery and insolvency

If your investment is not going to plan, we can help you protect it or maximize the value you can recover. With a highly successful track record, we bring creativity, enthusiasm and determination to every business rescue and turnaround project to ensure the best possible result whatever the circumstances. We cover all formal corporate and personal insolvency procedures.

Forensic

There are times when only an objective and clear assessment of a loss, or an analysis of financial transactions, can resolve a dispute or legal claim.

Our team's expertise ranges from commercial claims, professional negligence and matrimonial cases through to investigations and fraud enquiries across a wide range of industrial and commercial sectors. We get the job done on time, without fuss and in confidence.

Corporate finance

We help with corporate transactions involving both public and private companies by advising borrowers and investors on fund raising and financial structures. This can include identifying sources of private-equity finance, arranging sales and purchases of businesses and helping business managers acquire their company from external investors.

Our offices

Antwerp

Potvlietlaan 6

2600 Antwerp

Tel. +32 (0)3 235 66 66

Fax +32 (0)3 235 22 22

antwerpen@pkf.be

Brussels

Metrologielaan 10, b 15

1130 Brussels

Tel. +32 (0)2 242 11 40

Fax +32 (0)2 242 03 45

brussel@pkf.be

Hasselt

Maastrichtersteenweg 8, b 5-6

3500 Hasselt

Tel. +32 (0)11 22 72 45

Fax +32 (0)11 24 21 48

hasselt@pkf.be

Knokke-Heist

't Walletje 18

8300 Knokke-Heist

Tel. +32 (0)50 63 11 63

Fax +32 (0)50 63 11 73

knokke-heist@pkf.be

Turnhout

Parklaan 49 bus 7

2300 Turnhout

Tel. +32 (0)14 47 30 70

Fax +32 (0)14 63 80 17

turnhout@pkf.be

Chapter One



Geography and population

Belgium is situated in the West of Europe, bordered to the north by the Netherlands, to the east by Germany and Luxembourg and to the south and the west by France. Although its surface area of 30.528 km² makes it a small country, its location has made it the economic and urban nerve centre of Europe.

The total population of Belgium is approximately 10.8 million. The working population is 4.2 million. The country is divided into ten provinces and 589 communes.

Political environment

Belgium gained its independence in 1830. It is a constitutional monarchy. However, the Monarch's official powers and role are limited.

Since the early seventies, the country has evolved via five sets of institutional reforms (in 1970, 1980, 1988-89, 1993 and 2001) into an efficient (federal) structure. The legislative and decision-making powers in Belgium are no longer exclusively in the hands of the Federal Parliament.

The redistribution of these powers followed two main lines. The first concerns linguistics and, more specifically, all matters relating to culture. It gave rise to the Communities. Belgium is situated at the junction between the Latin based and Germanic Languages: French, Dutch and German. Thus Belgium has three Communities today, based on language: the Flemish Community, the French Community and the German-speaking Community. These correspond to population groups and assume responsibilities in the field of culture, education, health care and scientific research.

The second main line of the State reform is historically inspired by economic concerns, expressed by Regions who wanted to have autonomous power. This gave rise to the founding of three Regions: the Flemish Region, the Region of Brussels Capital and the

Walloon Region. To some extent Belgian Regions are similar to the American States or the German “Länder”. Their main competences are economy, employment, agriculture, energy, public infrastructure, environment, ...

The Federal State retains important areas of competence including: foreign affairs, defence, justice, finance, social security, important sectors of public health and domestic affairs, etc. The Regions and Communities are entitled to run foreign relations themselves in those areas where they have competence.

Economy

Belgium, a highly developed market economy, belongs to the Organisation for Economic Co-operation and Development (OECD), a group of leading industrialized democracies. In recent years, Belgium's GDP level has placed it in the top 20 for all countries of the world.

Further it is one of the pioneers of the European Union (EU). The EU is now established as one global trading area with no internal tariffs and with common standards applying to virtually the full range of commercial life. These close economic links between the members of the Union have been extended to the currency: the Euro (EUR).

Belgium is heavily into exports, in fact, around 50 per cent of the produce generated is exported. Belgium has to its credit the world's 14th and Europe's 2nd largest port, Antwerp, and also the world biggest diamond-trading centre.

The Belgian industrial sector can be compared to a complex processing machine: it imports raw materials and semi finished goods that are further processed and re-exported. Except for its coal, which is no longer economical to exploit, Belgium has virtually no natural resources. Nonetheless, most traditional industrial sectors are represented in the economy, including pharmaceuticals, steel, textiles, refining, chemicals, food processing, automobiles, electronics, and machinery fabrication.

Regulatory environment

Businesses and investors coming to Belgium must comply with regulatory law governing how they operate. These rules often change and the compliance burden on businesses is still increasing. Only a few of these can be dealt with here.

Trading and manufacturing companies

To establish a limited liability company in Belgium, one needs a notary to draft the incorporation deed. The most important articles of association have to be published in the Belgian State Gazette and the company has to be registered at the Crossroads Bank for Enterprises (CBE). Depending on the legal form of the company, the minimum capital can vary as well as the various legal obligations.

Use of languages

The law on the Use of Languages stipulates that all statutory documents and all documents be reserved for the personnel must be drawn up in the language of the region in which the company has its centre of business. If, e.g., a subsidiary or a branch is established in the Dutch-speaking region, all official corporate documents must be exclusively in Dutch. However, companies are free to add, for example, a non-official English translation to these documents.

Health and safety

Specific legislation exists regarding the health and safety of employees working in Belgium.

Data protection

The purpose of Belgian data protection law is to ensure that the processing of personal data involving an individual does not violate that individual's privacy or fundamental rights and freedoms. The processing of personal data can only take place if a number of specific conditions listed in the Data Protection Law are fulfilled. Personal data cannot otherwise be processed. But even among the authorised forms of processing, only those complying with a set of fundamental principles will be considered legitimate.

Intellectual property

Belgian law governs copyright and neighbouring rights, databases, patents, trade marks, designs and models, know how, topographies of semiconductor products and plant variety rights.

Competition law

Belgian Competition Law is, in most respects, modelled on the EC competition rules and draws heavily on the relevant EC Treaty provisions and implementing regulations for both substantive and procedural matters. It is designed to maintain a competitive economy by restricting the ability of companies to operate through a monopoly in their respective areas.

Except for certain exemptions, Belgian competition law prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion to an appreciable extent of competition within the relevant Belgian market, or a substantial part thereof. It provides that any abuse by one or more undertakings of its dominant position on the relevant Belgian market or a substantial part thereof is prohibited (or rather the abuse of such a position that constitutes an infringement). Finally it prohibits, subject to certain exceptions, concentrations, which create or strengthen a dominant position, that significantly hinder effective competition within the relevant market.

Unfair trade practices

The law on market practices is designed to protect free competition. Its fundamental principle is that everyone is free to enter into the business of his choice and to compete in Belgium in any market at his discretion. A trader may thus lawfully attempt to attract the customers of his competitors. However, certain methods of competition and of attracting customers and clients are prohibited in Belgium under a theory of unfair trade practices.

This means that persons engaged in trade of business must comply with certain rules of “fair play” and, more specifically, “fair trade practices”.

Money laundering and financing of terrorism

For some years Belgium has specific legislation to tackle money laundering and financing of terrorism. This legislation requires compliance with procedures designed to help prevent, identify and report suspected cases of money laundering and financing of terrorism to enforcement authorities.

The legislation applies not only to those conducting “relevant financial business” such as credit institutions, money change and insurance business, but also to certified auditors, accountants, tax advisors, lawyers, notaries and casino’s.

The regulatory framework is extensive and covers matters such as client identity verification, record-keeping requirements and required procedures for reporting suspected money laundering to the relevant authorities.

Financial and insurance services

Belgium is an international centre in which major financial institutions provide a full range of financial services.

Banking, finance and insurance services are subject to the supervision of the Banking, Finance and Insurance Commission. Its areas of responsibility include credit institutions, investment firms, the collective management of saving products, public offers, listed companies, financial markets, insurance companies and intermediaries, mortgage credits, surety companies, pension funds and consumers protection.

To obtain authorisation to carry out a business offering such “financial services”, an applicant is required to show that he is “fit and proper” to carry out these services.

EU-companies that provide “financial services” and that have a recognition in their home country can enter the Belgian market more easily based on the free provision of services within the EU.

The financial resources and the competence, integrity, honesty, reputation and experience of the members of the Board of Directors will also be taken into account to obtain, e.g. a “banking license”.

Exchange controls

There are currently no exchange controls in force in Belgium.

Currency and common financial instruments

Belgium is part of the European Monetary Union, the Euro is its currency. Belgium has sophisticated banking and financial services and there are numerous financial instruments available for those wishing to raise funds or manage financial risks.

A current account is used by a business to manage its finances and this facility can be opened with any bank, subject to certain requirements (see money laundering section above). Banks and other financial institutions offer opportunities for investment in the form of bank deposits or investment accounts. These range in the length of commitment required from deposit accounts accessible “on demand”, to fixed-term accounts of several years. The majority of individual retail transactions take place either in cash or by credit card or debit card, with cheque payments on the decline.

The main source of business finance is the financial institutions and most frequently takes the form either of an overdraft or of a term loan, fixed for an agreed period and on specified terms. Securities are often required by the lending institution with a charge being taken over one or more of the company's assets. Depending upon the company's risk profile and credit rating, personal guarantees may be also required.

An overdraft facility can be negotiated on current accounts, although security may be required as with loans. Overdrafts are usually repayable on demand.

Bonds can be a vehicle for both investment and a source of long-term finance, with either fixed or floating interest rates. Besides Government bonds, companies issue bonds, pay interest at regular intervals and repay capital on redemption. Such bonds may also carry a right for conversion into the ordinary shares of the company.

Businesses starting out often do not wish to incur large initial capital expenditure and therefore hire-purchase (HP) and leasing are widely used methods of acquiring assets. With HP transactions, the finance company purchases the goods but the lessee is able to use them in return for a regular payment. Legal title to the goods remains with the HP company until all payments have been made, when it transfers to the lessee. Leasing is very similar, except that the lessee does not necessarily become the legal owner.

The management of cashflow in a trading business can be assisted by debt factoring. The provision of finance is the most widely used service although factor companies also provide credit insurance and administration of the sales ledger. The general principle is that the supplier company sells the right to receive the invoice amount to the factor in return for a percentage of the face value of the debt, receivable immediately. The full debt is later collected by either the factor or the supplier. Costs and the percentage paid will vary depending upon the nature of the trade debtors.

Other financial instruments, traded on stock exchanges and often highly complex in their operation, are widely available. Futures contracts, for instance, are agreements between two parties to undertake a transaction at an agreed price on a specified date in the future and are most commonly used to buy or sell commodities and foreign currency against euro. Swaps are exchanges of cash-payment obligations. Currency swaps are agreements to use a certain currency for payment under a contract in exchange for another currency and enable the companies involved to buy one of the currencies at a more favourable rate. Similarly there are interest-rate swaps, which enable one company to exchange a fixed-rate obligation for the variable-rate obligation of another.

Chapter Two



Types of business structure

Foreign suppliers who want to distribute their products on the Belgian market can choose from a wide variety of means. They can export their goods directly into Belgium or, in cases where local presence is necessary or advisable for commercial reasons, they can set up a branch office or a subsidiary.

Alternatively, foreign suppliers can also use one or more commercial intermediaries.

Commercial representatives

Pursuant to the Law on Employment Contracts a commercial representation agreement is defined as an agreement in which a white-collar employee, the commercial representative, agrees to solicit potential customers in order to negotiate and/or conclude transactions under the authority, for the account, and in the name of one or more employers.

Commercial agents

The law regarding Commercial Agency Agreements implements the EC Council Directive on the Co-ordination of the Laws of the member states relating to Self-Employed Commercial Agents. A commercial agent is a person who negotiates commercial contracts in name of and for the account of his principal. The law regarding Commercial Agency Agreements contains a complete set of mostly mandatory rules regarding amongst others: the right of the agent to commission fees, the termination of the agency agreement, non-compete clauses and the goodwill indemnity that can be claimed by the agent in case of a termination of the agency by the principal.

Distributors

Under Belgian law, distribution agreements are usually defined as agreements whereby one party (i.e. the supplier) agrees with another (i.e. the distributor) to supply the latter with products or services for the purpose of resale. Such agreements can be entered into at different levels in the distribution chain: between manufacturer and importer, between

importer and wholesaler, or between wholesaler and retailer. One of the main characteristics of any distribution agreement is that the distributor sells the products or services in his own name and on his own account, unlike the commercial agent and the commercial representative. A distributor deals directly with his customer, and the resulting contractual relationships are established between the customer and the distributor. The latter bears the risks resulting from the individual resale agreements.

With one important exception, namely the law on the Unilateral Termination of Certain Categories of Exclusive Distribution Agreements, Belgian law does not contain any specific rule governing distribution agreements. Therefore, the parties are free to determine between themselves the content of the distribution agreement. Questions not specifically addressed by the parties will be governed by the general rules of contract law as contained in the Belgian Civil Code.

When drawing up a distribution agreement, the contracting parties should however, at all times, keep the provisions of Belgian and/or European competition law in mind.

Franchisees

Franchisees can be defined as legally and financially independent commercial intermediaries acting in their own name and on their own behalf but entering into a particular form of business partnership based upon a close and ongoing collaboration with a franchisor. Together, the franchisor and the individual franchisees form the franchised network. The franchisor grants its individual franchisees the right, and imposes the obligation, to conduct a business in accordance with the franchisor's concept. To do so, the franchisor grants to its franchisees a right to use a package of industrial and/or intellectual property rights (relating to trade marks, trade names, service marks, shop signs, utility models, designs, copyrights, know-how, patents, etc.) and a continuous commercial, legal and technical assistance. Under Belgian law the franchisor is obliged to provide the candidate-franchisee with certain pre-contractual information and to observe certain obligations in the pre-contractual phase. If these pre-contractual obligations are not observed than certain provisions of the franchise agreement, or even the entire franchise agreement, could be declared void.

Companies

It is possible to set up a Belgian business through a variety of company forms and arrangements. They can either have a commercial or civil character, depending on the type of activities performed (eg. doctors, attorneys...). The main types are set out below.

The fundamental concept underlying Belgian Company law is that a company, its directors and shareholders are each separate (legal) persons. The Belgian company therefore has rights and duties, independent of its shareholders and directors and can take (or be the subject of) legal actions in its own name.

The two most widely used company forms in Belgium are: a Public Limited Liability Company (in Dutch: Naamloze Vennootschap – NV, or in French: Société Anonyme – SA) and a Private Limited Liability Company (in Dutch: Besloten Vennootschap met Beperkte Aansprakelijkheid – BVBA, or in French: Société Privée à Responsabilité Limitée – SPRL).

An NV/SA is a company with share capital, where the capital input is more important than the personal bond and collaboration between the shareholders.

The shares (which can be bearer shares or shares in registered form) can be bought and sold freely unless the articles of association and bylaws stipulate otherwise. According to the prescriptions of the Belgian law of 14 December 2005 bearer shares will be gradually abolished. As from 1 January 2008 the new shares issued must exclusively be either “registered” shares or “dematerialized” shares. All existing bearer shares will have to be converted into either “registered” shares or “dematerialized” shares before January 1st 2014.

An NV/SA is generally the type of company dealt with on Euronext. The initial capital must be at least EUR 61.500 (fully paid up).

A BVBA/SPRL is an association of (legal and/or natural) persons, with an emphasis on the importance of the collaboration between the partners, rather than the mere capital input. This type of company is therefore most frequently favoured by small businesses. The shares are always in registered form and the initial capital must be at least EUR 18.550 (with at least EUR 6.200 or EUR 12.400 paid up).

Foreign companies and foreign investments

A foreign company can also establish a presence in Belgium by setting up a branch office. A branch office has no separate legal personality and is an extension of the foreign company but implies the involvement of a management function or at least a representative with the ability to deal directly with third parties from a Belgian location.

The foundation of a branch office is more complicated than the incorporation of a Belgian company, since a number of documents of the foreign company must be translated, legalised or even authenticated (with a so-called apostille stamp).

Foreign companies are subject to the same requirements as Belgian companies. Moreover, the annual accounts of the parent company are to be published, in their relevant format in Belgium.

The legal representatives of a Belgian branch of a foreign company are liable in the same way as directors of Belgian companies. The foreign company is liable for all undertakings of the branch office in Belgium.

The Belgian bankruptcy legislation is applicable to branches of foreign companies, but its scope is limited to the assets in Belgium.

Even without establishment in Belgium, the foreign company may in certain cases be required to register for Belgian VAT purposes (see VAT registration in Chapter Five A).

Partnerships

The following types of partnerships may be established in Belgium:

- General partnerships (société en nom collectif / vennootschap onder firma, SNC/VOF), with a separate legal entity in which partners have joint and unlimited liability.
- Transparent partnerships are also used by members of specific professions, such as doctors, attorneys and auditors. In principle, the partners are jointly and unlimitedly liable.

Joint ventures

A joint venture generally involves a contract-based co-operation on a project between two or more parties, where they may agree to share expenses or income, or both, derived from the project. Its legal implications are to be determined in the joint venture contract by the parties concerned.

Economic Interest Grouping (EIG)

The EIG is a grouping established by two or more parties the sole aim of which is to facilitate or develop the economic activities of its members or to improve or increase the profits derived from these activities. The activities of the grouping must be related to the activities of its members and must not be more than ancillary to these activities. This means that an EIG may not replace the activities of its members.

The EIG could be used as a vehicle for co-operation in a number of areas including lobbying, co-operation between law firms, joint purchasing of raw materials, advertising, provision of ancillary services in the context of franchise networks and research and development. The purpose of an EIG may not be to pursue profits. However, this does not mean that an EIG cannot make profits in the course of its activities.

VAT Grouping

Taxable persons that are established in Belgium and that are mutually closely bound by economic, organisational and financial links, can opt for VAT grouping. Such persons are from a VAT perspective then regarded as one single taxable person.

Chapter Three



Raising adequate external finance is not always easy, especially for smaller businesses. However, with professional guidance, the problem of obtaining adequate funding for an initial investment, as well as for future growth and expansion, should not prove difficult.

The size of the business concerned and the level of funding required will determine the sources of funding.

Equity Finance

Private equity

For certain levels of investment, venture capitalists provide a common source of equity funding. The amounts of money potential available via this source can be significant, but success in securing such funding may not be so easy. Venture capitalists demand a rapid (and relatively high) return on their investments and require evidence of a sound management track record and a clear exit plan.

In return, they may provide not only financial support but also valuable relevant experience. Often, they are also part of the Board of Directors.

Listing

Obtaining a listing on one of the open markets may provide the solution to businesses seeking to expand further. A listing will not only provide access to capital and growth and a market for trading in shares, but will also increase public profile and credibility.

Nasdaq Europe provides an alternative to a listing on Euronext Brussels. This is more attractive for smaller growth-oriented businesses with a smaller market capitalisation.

Established financial control procedures and a solid administrative organisation are essential for a listing to be accepted. A listing on Euronext Brussels normally implies a certain track record of trading. Normally, a merchant bank or stockbroker will guide the company and will ensure compliance with the legal regulations.

Loan funding

Overdraft

Borrowing from a bank by way of overdraft remains the simplest form of external funding. However, as an overdraft can be called in at short notice since the interest rates will be higher, its use should generally be restricted to short-term cash flow funding, with longer-term needs met by more secure loans.

Term loans

Fixed-term loans may provide a better solution to fund start-up costs, since repayment schedules and interest rates can be agreed and budgeted for from the outset. Such loans are usually secured by a pledge on assets, such as property, debtors or plant and machinery. For smaller companies, the lender may also require personal guarantees from the directors or controlling shareholders. Fixed or variable interest rates may be available, with more complex arrangements available for larger loans, including “caps”, “collars” and “floors”. These restrict the interest chargeable.

Other loans

Loans to assist in the purchase of specific assets may come in different forms, varying from straight-forward hire purchase of items through finance or operating leases. As each method will have differing cost and taxation implications, advice should be sought on the most appropriate method for each situation.

Factoring and discounting

With factoring, the factor pays the company a proportion of the relevant invoiced amount and is then free to collect the debt itself. Once collected, the balance of the invoice, less interest and administration charges, is paid over to the business. The business will usually remain liable to pay the factor for any bad debts.

With invoice discounting, the business itself retains control of the debt collection. All the factor does is to provide a proportion of the invoice face value until such a time as the debt is collected.

Incentives and grants

Companies thinking of setting up factories, offices or distribution units in Belgium should be aware that, through the Belgian Federal Government, the different Regions and the European Union, there are many grant schemes and incentives available that can help reduce the cost of a specific investment.

We cannot possibly describe all incentives in detail, but we will summarise the most important ones:

- R&D grants: available in Belgium for the development of innovative products;
- investment incentives: for small, medium-sized and big companies; (they refer to the expansion of the company in Belgium);
- employment grants: for companies employing young employees (receiving an unemployment allowance) or employees with a low grade of education, or reorganising the workload (part time labour, reduction of working hours, ...). There are also tax reductions for having employees with a very low salary;
- grants in connection with venture capital, stock options, ...;
- grants in connection with environmental protection;
- several tax incentives are shortly discussed in Chapter Five.

Chapter Four



Companies incorporated in Belgium have to comply with the following legal requirements in order to become operational:

- registration in the Crossroad Bank for Enterprises (in certain cases, after having obtained the necessary certificates of management and/or other skills);
- application, where appropriate, for a VAT number;
- application, where appropriate, for a social security number;
- joining a social Security Fund.

Other recurrent legal requirements are that:

- accounts must be prepared by the Board of Directors in accordance with a standardised series of accounting principles and rules and may have to be audited by a registered auditor; certain smaller companies are exempt from this audit requirement;
- a general meeting of shareholders must be held each year in order to approve these accounts;
- the approved annual accounts must be published together with the directors' report.

Statutory accounting requirements and principles

Each year the directors must prepare the inventory and the annual accounts which consist of a balance sheet and a profit and loss account with an explanatory memorandum. These documents must be drawn up according to the rules in the law on annual accounts and any special laws to which the company is subject. In addition, the Board of Directors must prepare a directors' report.

These documents must be submitted to the auditors at least 1 month before the general annual meeting of shareholders.

In the 15-day period prior to the meeting, shareholders may inspect the following documents at the seat of the company:

- the annual accounts;
- the list of securities held by the company;
- the list of the shareholders whose shares are not paid up;
- and the reports of the directors, auditors, and special supervisors, if any.

Upon approval of the annual accounts by the general meeting, the general meeting decides by separate voting whether or not to relieve the directors and auditors of their liability to the company.

Full accounts

In principle, every company has to prepare full accounts. The bookkeeping has to be in line with the volume and character of the activity. Moreover, the company may have to take into account specific legal prescriptions related to that activity.

Every company governs its bookkeeping by means of a system of books and accounts, taking into account the prescriptions of a double-entry bookkeeping. The accounts should contain all transactions, accounts receivables, properties, debts and obligations no matter from what nature. When a company deals with different economic activities, it is obliged to have a system with separate accounts for every activity.

Abbreviated accounts

The option to draw up abbreviated accounts, which means that the accounts contain considerably less information on public record, is only applicable to:

- natural persons and non-residents who are salesman, to general and limited partnerships (VOF/Comm.V.);
- to foreign corporate members, equivalent to a general and limited partnership (VOF/Comm.V.), who have a centre of activity in Belgium;

on condition that

- the turnover of last year in general does not exceed EUR 500.000, and
- their activities are not connected to the activities of credit institutions, submitted to special laws, exchange brokers, insurance companies or financial institutions.

Audit requirements and role of auditor

Which companies are obliged to have their annual accounts audited?

Control through one or more auditors on behalf of the shareholders is obliged for all public limited liability companies, private limited liability companies, limited companies with shares and co-operative companies as far as these companies are large companies.

A company is to be considered as large when it exceeds more than one of the following criteria:

- annual average of registered employees: 50
- annual revenues excl. VAT: EUR 7.300.000
- balance total: EUR 3.650.000

A company is always a large company when it employs more than 100 employees.

Control through one or more auditors on behalf of the works council is obliged to all companies with a works council (mostly more than 100 employees). If this company is a capital based company, the auditor on behalf of the works council is the same as the auditor on behalf of the shareholders.

Small capital based companies can provide in their articles of association that no auditor will be appointed and that every individual shareholder will have the authority to control and investigate the annual accounts. However, many entities consider that an audit is beneficial even if not legally required. Reason for this is that lenders or creditors demand or expect it, to reassure directors that they have met their accounting responsibilities, for the benefit of shareholders who are not directors, to minimise questions from tax authorities,

to provide feedback to the directors on their systems and controls, to alert the directors to possible problems regarding the company's ongoing financial viability, etc.

What is the role of an auditor?

The auditor will examine the accounts and accounting records of the company and prepare a report for the company's members. The report, included in the published report and accounts, will contain an opinion on whether or not the company's annual accounts have been properly prepared in accordance with the Companies Act and whether or not they give a true and fair view on the company's financial affairs. The auditor will also consider whether or not the information given in the directors' report is consistent with the annual accounts. If, in the auditor's opinion, the accounts or directors' report do not comply with the Companies Act, the auditor will give a negative report.

Can an auditor provide other services?

Yes, subject to observing ethical standards to ensure that the auditor's independence is in no way impaired. There are stricter ethical rules for auditors of listed companies.

Chapter Five



A. Overview of taxes within Belgium

The Belgian tax system can be divided in direct taxes, mainly consisting of individual income taxes and corporate income taxes, and indirect taxes, including essentially value-added tax, inheritance and gift taxes, registration fees and excise duties. Regions and local authorities levy minor local taxes.

The Federal Tax Department (Ministry of Finance), which is divided in different departments in accordance with the various taxes, administers the Belgian tax laws. The assessment and the collection of income taxes and VAT are controlled by a same department, i.e. the “administration of business and income taxes” (AOIF/AFER). In addition, there is a specialised department (BBI/ISI) with an overall competence in tax matters, which deals with the more substantive and difficult cases. Within the administration of direct taxes there are specific units which control certain sectors, e.g. non-resident taxpayers, the financial and insurance industry and the real estate sector.

As from 2005, a new general ruling practice has been installed within the Federal Tax Department, so that taxpayers can obtain within a reasonable timeframe an advance decision with respect to the tax consequences of the transactions that they intend to undertake (advance tax rulings, advance pricing agreements, etc.).

The ruling commission in principle covers all matters for which it is competent. As a consequence, the new ruling practice is not only limited to income taxes but will also cover VAT, registration duties, eco-taxes, customs and excises, etc.

Income tax

Belgian income tax applies in general to the worldwide income generated by Belgian resident individuals (personal income tax) and companies (corporate income tax). Moreover, non-residents are taxed on their Belgian sourced income (non-resident income tax). Double tax relief is provided for through some internal systems as well as through the application of international treaties.

Personal income tax

Taxable persons

Individuals and unincorporated businesses annually have to report the income earned or received during the calendar year. The year following the income year is known as the assessment year. The tax return has to be completed, dated, signed and returned to the tax authorities in principle before 30 June of the assessment year. Delays may be obtained. Assessment is made in principle before 30 June of the following year.

Taxable income

A Belgian resident individual is liable to individual income tax on his worldwide income whereas non-residents are assessed on Belgian-sourced income only, subject to the terms of double taxation treaties.

The total taxable income is the aggregate of net income arising from an employment (received income), an occupation or business (earned income of a self-employed individual), real estate, personal property and other miscellaneous sources, reduced by deductions that may be set off against total income.

Tax rates

The global net taxable income is in general subject to progressive income tax rates. For a table of these rates, see Appendix I. Several types of income are, however, taxed separately at flat tax rates. E.g. dividends and interests, if not related to an individual's self-employment, may be taxed separately. The taxes withheld at source at a rate of 25% or 15% become as a result final taxes.

Belgian law does not provide for a separate capital gains tax: it is part of the income tax.

- Capital gains on privately held assets are in general tax free: occasional profits and proceeds, not connected with a professional activity, are taxable as "miscellaneous income" (rate of 33%) unless the profits are obtained through the normal management of one's private fortune (without speculation).

- Capital gains from built-on or undeveloped real property are also taxable as miscellaneous income (rate of 16,5% or 33%) if certain conditions (e.g. the alienation within five or eight years after the acquisition) are met.
- Capital gains from the alienation of a Belgian corporation's shares to non-resident companies are taxable at the rate of 16,5%, if the taxpayer (or certain family members) owned more than a 25% participation in the corporation during the last five years. This taxation was, however, not in line with the European laws (free movement of capital ...) and was therefore restricted to alienations in a non-European context.
- Capital gains, realised from fixed assets invested in an individual's occupation or business, are taxed at the normal progressive income tax rates. If these assets (other than financial assets) are held for more than five years before disposal (or if the gains result from enforced alienation) the capital gains may be separately taxed at a rate of 16,5% or 33%.

Municipal taxes are imposed on the federal income tax due. The rates vary among the cities, but are approximately 5% to 9% of the amount of the individual's income tax.

Corporate income tax

Taxable persons

A resident company is liable to corporation tax on its worldwide profits, including capital gains. A company is resident in Belgium if its registered address or centre of management is situated in Belgium. Under this definition, the place of incorporation is irrelevant.

Taxable income

Taxable income is based on the results as reported in the companies' annual financial statements, which therefore include all profits and losses, capital gains and losses, dividends, interests and royalties. For accounts, closed on 31 December, the year following the income year is known as the assessment year (for accounts closed at another date, the assessment year is equal to the income year).

The tax return has to be completed, dated, signed and returned to the tax authorities in principle before 30 June of the assessment year (for accounts closed at another date, within six months after closing). Extensions may be obtained.

To arrive at the taxable result, the results disclosed in the financial statements are adjusted for disallowable expenditures, exempt profits, special deductions and losses carried forward. Foreign profits may be exempt from corporation tax in Belgium if a double taxation agreement provides for it.

Belgian law does not provide for a separate capital gains tax; it is part of the income tax. For companies, capital gains are normally regarded as ordinary business income taxable at the normal corporate tax rates.

Nevertheless, there are exceptions, such as:

- the exemption of unrealised capital gains on fixed assets (if booked on a separate account and not taken into account for the determination of any profit distribution);
- the exemption of realised capital gains on shares (under the conditions for the dividends received deduction as set out below, but without the condition of the minimum participation), and
- the deferred taxation of capital gains on certain fixed assets (on condition of a qualifying re-investment of the purchase price or compensation received).

A “dividends received” deduction from gross income of 95% of inter-corporate dividends paid by resident and non resident subsidiary companies to a qualifying Belgian company or a Belgian branch may be applied provided that:

- the subsidiary has been subject to a corporate income tax similar to Belgian corporation tax (for non EU companies the minimum nominal tax rate or effective tax burden must be 15%);
- the parent company owns a participation of at least 10% of the subsidiary's capital or a participation whose acquisition value is at least EUR 2.500.000 (as from 1 January 2010);
- the shares have been held (full property) for a continuous period of at least one year.

A fixed foreign tax relief (FFTR) on foreign source income, such as interest and royalties, except for dividends, may reduce Belgian corporate tax by the amount of the tax paid in a foreign country. The FFTR is a credit against tax due and is not refundable. The FFTR equals maximum to 15/85 of income received net of the actual tax paid in the foreign country. To reduce this tax advantage and to counter potential abuses, measures including rate reduction, anti-channelling provisions and proportional imputation have been introduced. The FFTR will only be granted if the actual tax has been paid in the foreign country.

Losses can in general be carried forward indefinitely (there are some restrictions in case of reorganisations and change of control). Losses cannot be carried back. Belgian tax law does not permit consolidated group returns. Consequently, losses of different companies may not be transferred among group members.

Some main incentives are very briefly summarised below:

- a declining balance depreciation (optional, for certain assets not accepted);
- an accelerated depreciation (for qualifying assets, under specific laws or rulings);
- an investment deduction (for a percentage of the acquisition price / cost of certain specific assets, depending on several conditions. E.g. 20,5 % on the depreciation of the investment in environmentally friendly investments or in research and development, ...);
- a deduction for hiring certain types of supplementary staff (amounting to EUR 10.000 (before indexation) for each “staff unit” employed as the head of the quality control department and the head of export services);
- a tax-exempt investment reserve for small and medium-sized companies within certain limits. The investment reserve is exempt to an amount of 50% of the retained profits (after some corrections), limited to an annual maximum EUR 37.500. The amount of the investment reserve has to be used within three years for investments in depreciable tangible and intangible assets. Moreover, it is not allowed to transfer the assets within three years after the investment was made.
- a deduction for risk capital, that has been introduced as from assessment year 2007

(i.e. financial years ending on or after 31 December 2006). Under the new rules, Belgian corporate income taxpayers will for tax purposes be allowed to claim a notional interest deduction reflecting the economic cost of the use of capital, equal to the cost of long-term, risk-free financing. The tax benefit resulting from the notional interest deduction can be carried forward for seven years if there is insufficient tax capacity in the year of deduction.

- an 80% deduction for certain revenues derived from patents

Tax rates

The tax rate is the same whether profits are retained or distributed. The basic rate is 33% increased by a 3% crisis contribution (surcharge) which brings the total rate at 33,99%.

Under certain conditions lower rates exist for small companies:

<u>Band of taxable Profit</u> EUR	<u>Rate Applicable to Band</u> (%)
0 - 25.000	24,25 + 3% surcharge (24,98%)
25.000 - 90.000	31,00 + 3% surcharge (31,93%)
90.000 - 322.500	34,50 + 3% surcharge (35,54%)

Recently a special tax regime has been introduced for companies (and private entrepreneurs) engaged in shipping (tonnage tax). They may under certain conditions elect to report taxable income for corporate income tax as a certain percentage of the volume transported. The regime will be granted for an initial period of ten years, with an automatic renewal every ten years. Belgian companies or branches exclusively engaged in the management of ships on behalf of third-party owners also qualify for the regime if at least 75% of the ships are registered with the Belgian shipping register.

Value-added tax, customs and excise duties

Taxable activities

As a member of the EU, Belgium's Value Added Tax (VAT) regime is similar to other VAT regimes throughout the EU. In general VAT is due on supplies of goods and services, the import of goods from outside the EU and the intra-community acquisitions of goods from other EU member states. If these transactions take place in Belgium, they are in principle subject to Belgian VAT.

Entrepreneurs charging VAT to their customers are liable to report and pay this VAT to the Belgian State. Any VAT incurred in the course of the entrepreneur's taxable activity (e.g. charged by the entrepreneur's suppliers), can in principle be deducted or set off against the VAT due. Only the net amount must be paid to the tax authorities. If there is a balance of deductible VAT, the amount can be recovered from the tax authorities. Consequently, the real burden of VAT falls on the final consumer, with the intervening business effectively acting as a collecting agent for the Federal tax office.

VAT rates and exemptions

The standard rate is 21%. For specific supplies of goods and services, reduced rates of 6% or 12% apply (see also Appendix I).

When the place of supplies or services is deemed to be outside Belgium, no Belgian VAT should be charged. This is for example the case for most types of services for foreign businesses. Although no VAT is charged, the entrepreneur can in principle still deduct VAT incurred for the purposes of these activities.

Some supplies are VAT exempt, such as intracommunity supplies within the EU and export of goods outside the EU, etc.

Although entrepreneurs performing such exempt (so-called "zero-rated") supplies do not charge any VAT to their customers, they can deduct the VAT incurred for the purposes of the zero-rated activity.

Finally, there are also other VAT exempt transactions, such as supplies of land, insurance, certain legal services as well as postal, financial, educational and health services. Unlike for “zero-rated” supplies, the entrepreneur performing “exempt” transactions cannot deduct or recover the VAT he has incurred on his purchases and expenses related to this activity. As a consequence such entrepreneurs suffer the input VAT as an additional expense of their business.

Registration

Anyone who is liable to pay VAT to the Belgian State and any taxable person “established” in Belgium (resident or permanent establishment for VAT purposes) must in principle register for VAT purposes and have a VAT identification number. The Belgian identification number consists of the letters BE followed by a ten-digit number.

Foreign entrepreneurs with an establishment for VAT purposes in Belgium must register in the same way as a Belgian resident entrepreneur.

Foreign entrepreneurs without an establishment for VAT purposes in Belgium should only register for Belgian VAT purposes if they perform taxable activities in Belgium for which they are liable to pay Belgian VAT (i.e. no application of reverse charge). This can for example be the case when the entrepreneur performs in Belgium:

- Imports of goods
- Intra-community supplies of goods to other member states;
- Local supplies of goods or services to non-taxable persons;
- Real estate business

Etc.

In some cases VAT registration in Belgium may even be advantageous for this entrepreneur in order to limit or even avoid a disadvantageous pre-financing of Belgian VAT charged.

The VAT registration by the foreign entrepreneur (without an establishment for VAT purposes in Belgium) concerns either a direct registration (without VAT representative) or a

registration with appointment of a VAT representative. However, non EU businesses without an establishment in the EU do not have this choice and should obligatory register with appointment of a VAT representative.

There are however several exceptions to the requirement to register for VAT purposes:

- Small entrepreneurs established in Belgium (resident or permanent establishment), with an annual turnover under EUR 5.580, do not have to register.
- Non-Belgian entrepreneurs without an establishment in Belgium intervening in the transaction must apply a reverse charge to their supplies in Belgium in case their customer is either a Belgian entrepreneur filing periodic VAT returns or a non-Belgian entrepreneur registered by means of an individual VAT representative in Belgium. In such cases, the liability to pay VAT is shifted to the customer and VAT registration is not required. As a result, foreign entrepreneurs performing activities in Belgium are often not required to register for Belgian VAT purposes.

Finally, taxable persons established in Belgium can opt for VAT grouping if they are closely bound by organisational, financial and economic links.

VAT returns

- VAT registered persons must file VAT returns on a monthly or quarterly basis, depending on the amount of annual turnover. The returns must be filed before the 20th of the month following the taxable period. Any balance of VAT due must be paid by the same date. In addition, monthly or quarterly European sales listings and annual listings of Belgian VAT registered customers may have to be filed.

Invoicing

A Belgian invoice needs to mention specific data in order to be valid. Suppliers can be fined if their invoices are not compliant. More importantly, the customer's right to deduct the VAT can in such case be rejected at the occasion of a VAT inspection. However, in case the reverse charge mechanism applies, the customer can draw up itself a so-called "waiting document", on the basis of which he can reverse and immediately deduct the VAT due.

Outsourcing and self-billing are allowed but are subject to strict administrative guidelines. Electronic invoicing is allowed under the same conditions as invoicing on paper. In practice, most businesses still issue invoices on paper.

Penalties

Belgian VAT authorities are usually able to inspect the previous 3 calendar years of an entrepreneur. The 3-year period can be extended to 7 years (in case of fraud, intent to harm or external sources revealing infractions).

The authorities tend to focus on the formalities to be fulfilled, and can impose penalties up to 200% of any unpaid or incorrectly deducted VAT, increased with 0,8% interest per month. Usually penalties are reduced and range between 10 and 20%.

VAT refunds

Input VAT can be recovered until the end of the 3rd calendar year following the transaction. This VAT can be deducted by reporting the VAT as deductible in the appropriate box of the VAT return. Limitations to VAT deduction apply amongst others to passenger car costs (50%), food, beverages and hotel accommodation (0% except in some cases), reception costs (0%). Foreign entrepreneurs not filing regular VAT returns in Belgium can file a VAT refund claim. For such claims specific terms and conditions apply. In this respect, the Belgian VAT authorities do not require reciprocity with the entrepreneur's home country.

Custom duties

As a member of the EU, Belgium is part of the European customs union and applies the European customs tariffs and regulations. Accordingly, goods entering the European Union in Belgium are in principle taxed with customs duties.

Excise duties

As a member of the EU, Belgium applies the European excise duty tariffs and regulations. In addition to European excise duties which are levied on tobacco products, alcohol, alcoholic drinks and mineral oils, Belgium also levies excise duties on coffee and non-alcoholic drinks.

Exemptions or refunds of these duties may apply under certain conditions.

Other taxes

Inheritance tax

In principle, Belgian inheritance tax is levied on the worldwide assets of a deceased resident of Belgium. The rates of inheritance tax levied depend on whether an individual was a resident of Brussels, Flanders or Wallonia for most of the time during the last five years (rates see Appendix I).

A very beneficial tax regime for transfers on death of family-owned businesses and companies can be applied under certain circumstances.

If the deceased is a non-resident, transfer duty is levied at the same rates as inheritance duty but only on the value of property situated in Belgium.

The inheritance tax and the transfer duty upon death are calculated by means of a declaration.

The property, which, according to the evidence supplied by the administration, the deceased disposed of as a gift in the three years preceding his death is considered as part of his inheritance if the donation itself has not been liable to the donation duty.

The gross tax base is in principle the market value of the goods at the moment of decease.

Registration fees

Registration duties have also become an exclusive competence of the regions as from 1 January 2001. The main registration duties are imposed on the sale of real property, the public sale of personal property, the rental of real property, the installation of mortgages and similar rights, the division of real property, gifts, matrimonial contracts and court decisions.

In general, no registration duties are levied on the formation or increase of a company's share capital. There are exceptions in case of the contribution of dwellings by individuals, or in case liabilities are transferred together with the assets concerned. No duty is payable on certain contributions to capital arising out of mergers, amalgamations and reorganisations, provided the contributing companies are registered in the EU.

Gift tax is imposed on the registration in Belgium of a written document in which a gift is granted. Under Belgian law all donations should in principle be made before notary, and all Belgian notary deeds should be registered. This is definitely so for real estate situated in Belgium. For real estate situated elsewhere and for personal property, Belgian gift tax will only apply if the gift is conveyed through a legal deed that has to be registered in Belgium or if a foreign deed is (deliberately) registered in Belgium. Indeed, movable property given "from hand to hand" (i.e. without a written document) and gifts enacted outside Belgium are not subject to gift tax. However, if the donor dies within three years from the date of the gift, the gift is deemed to be a legacy and will be subject to inheritance tax.

The beneficiary is, in principle, liable to pay the gift tax, but the contract can transfer this liability to the donor.

The donee is, in principle, liable to pay the gift tax, but the contract can transfer this liability to the donor.

In general, progressive rates apply, depending on the degree of kinship between donor and beneficiary (rates see Appendix I). Under certain conditions personal property can be donated under low, flat rates. E.g. in the Flemish region flat rates (3% for lineal relatives and spouses and 7% for other beneficiaries) have been introduced for gifts of movable property. As a result the higher progressive rates will in general only apply to the donation of real estate.

B. Taxation on property / land

The tax treatment of rental income and profits from the sale of property and land will be briefly considered separately in this chapter.

Annual real estate withholding tax

Owners of real estate are subject to an annual real estate withholding tax (“onroerende voorheffing / précompte immobilier”), which is a final tax, separate from the income tax levied on real or fictitious rental income derived from real property by individuals or companies.

It is determined as a percentage of the fictitiously estimated rental income of the property (“kadastraal inkomen/revenu cadastral”) which is determined by the tax authorities on a lump sum basis, at the occasion of the construction or renovation of the property. The rate (average: 35%) depends on the location of the real estate, as it consists of a main part (2,5 or 1,25%) levied for the account of the Region it is located in, which is increased by a percentage for the province and community where it is located.

Annual income tax

As indicated above, real (or for individuals also fictitious) rental income derived from real estate is subject to individual or corporate income tax under the general tax system as described above.

In general, the capital gains resulting from the sale of the full property or certain temporary real rights are subject to income tax as well.

- Capital gains on privately held property is in general tax free, if the profits are obtained through the normal management of one's private fortune.
- However, capital gains from land and buildings are taxable as miscellaneous income (rate of 16,5% or 33%) if the alienation is situated within five or eight years after the acquisition.
- Occasional and speculative profits and proceeds realised by individuals, not connected with a professional activity, are taxable as "miscellaneous income" (rate of 33%).
- If the capital gains are realised as part of a business activity, they are in general taxable at the normal rates applicable in individual or corporate income tax:
 - Capital gains realised from fixed assets invested in an individual's occupation or business are taxed at the normal progressive income tax rates. If these assets are held for more than five years before disposal or if the capital gain has been realized upon certain external circumstances, the capital gains are separately taxed at a rate of 16,5%.
 - Capital gains realised from fixed assets that are held by a company for more than five years before disposal or if the capital gain has been realized upon certain external circumstances, deferred taxation of the capital gains can be applied for, on condition of reinvestment of the full sales price or compensation received in qualifying assets.

Registration duties

Today the sale of real estate to either individuals or companies is generally taxed with 12,5% registration duties. This rate has been lowered to 10% for real estate situated in Flanders. An exemption of registration duties applies if the sale of newly built real estate takes place with application of VAT.

Rental contracts, including contracts regarding long-lease or building and planting rights, are subject to 0,2% on the income to be received during the full contracting period.

The division of undivided real estate between initial undivided owners is subject to a separate 1% duty.

A property owned by a company may be obtained through purchasing the shares of the company. In Belgium this transfer is not subject to major procedures or taxes such as registration duties or VAT (unless the tax authorities can demonstrate that it was the intention of the parties involved to sell the real estate itself rather than the shares of the company). Capital gains on shares are in general not taxable either.

VAT

The sale of land or (old) buildings is in principle exempt from VAT.

Under certain conditions (e.g. option), new buildings and the relating land can be subject to 21% VAT on the effective (but at least the normal) value. Buildings are considered to be new for VAT purposes until the end of the second calendar year following the year of their first use. Application of VAT allows the vendor to deduct or recover the VAT incurred on the construction or acquisition of the building.

The rental of buildings is in principle also exempt from VAT, with no option to tax with VAT. However, as an exception, the rental of warehouses or parking space and the use of hotel or holiday accommodation are (a.o.) in principle VAT taxed. Also, under very specific conditions, the leasing of new buildings as well as the rental of immovable goods, used for the exploitation of airports, ports or waterways, can be subject to VAT.

Construction, renovation or alteration of buildings is in principle subject to 21% VAT, but can by derogation be subject to a reduced rate of 6% or 12% under certain conditions. A reverse charge mechanism applies to such works if the customer is a Belgian company filing periodic Belgian VAT returns.

Registration as a contractor

In Belgium the registration as a contractor is not required. It has no specific VAT consequences any more, but for direct tax purposes (i.e. to obtain certain tax benefits) or for governmental orders the registration as a contractor can still be recommendable. In practice most contractors are registered since it can give a certain degree of confidence to potential clients.

Moreover, if a building contractor has outstanding debts towards the Belgian tax and/or social security authorities, his principal has to withhold a percentage of the invoice price. The principal must pay this amount to the Belgian tax and/or social security authorities. The principal who did not make these withholdings / payments may be held jointly and severally liable for any tax and social security debts of his contractor.

In the past, this withholding requirement applied if the building contractor was not registered as a contractor in Belgium. This requirement is not linked any more to the registration as a contractor.

C. Tax implications of a place of business, branch or Belgian company

Legal issues

A foreign business (individual or company) can be present in Belgium through a mere representation, an establishment or a separate Belgian company. The main difference between a branch of a foreign company and a Belgian company, is that the first acts as a foreign company and the second as a Belgian legal person.

Belgian law recognises the legal personality of companies incorporated according to foreign legislation. Foreign companies have, in principle, the same rights and obligations as Belgian companies. Consequently, Belgian law is applicable to foreign companies in the same way as to Belgian companies. Therefore, the foreign company legally can perform all

acts in Belgium, and the directors and the other legal representatives of a foreign company are liable in the same way as the statutory delegates of a Belgian company. A Belgian company may be considered more attractive than a branch, as it can avoid a foreign investor to being exposed to claims arising from Belgium.

As explained above, the Belgian presence of a foreign business may affect Belgian taxation. The tax impact of a separate Belgian company (subsidiary) has been set out already before. Below we will therefore comment on the tax implications of a place of business or a branch in Belgium.

Income taxes

Taxable persons

A Belgian establishment is a permanent establishment or fixed place of business through which the business of the enterprise is wholly or partly carried on. The taxable income of a non-resident taxpayer includes all profits made through this Belgian establishment.

However, a business can have a presence in Belgium without carrying on a trade that qualifies as an establishment. Under most tax treaties, permanent establishments are exempt from corporate income tax if the foreign enterprise:

- keeps a stock of goods in Belgium solely for the storage, display, or delivery, for processing by another enterprise;
- maintains an office in Belgium for purchasing goods or collecting information; or
- maintains an office in Belgium for advertising, for the supply of information, or for activities, which have a preparatory or ancillary character for the enterprise.

The foreign company should look for professional advice to check whether its Belgian activities will constitute a taxable presence.

Besides the concept of a “permanent” establishment under the many comprehensive treaties for the avoidance of double taxation, Belgian law has its own concept of a “Belgian”

establishment. This concept is much more extensive than under the double tax treaties. Where no relevant tax treaty exists, a branch of a foreign company will easier qualify as a “Belgian” establishment, which involves the taxation in Belgium of profits attributable to the branch.

Taxable income

A non-resident company with a qualifying “Belgian” or “permanent” establishment in Belgium is liable to non-resident’s tax on the income attributable to the establishment. This may include dividends, patent royalties and interest attributable to the branch as well as its business profits. Business profits are computed in the same manner as for resident companies; however royalties, interest and similar expenses paid by a branch to its head office are not deductible. Expenses incurred outside Belgium that relate to the branch business may be deducted.

A permanent establishment must keep separate financial records. The profits of the permanent establishment are computed separately. If the permanent establishment fails to keep its own financial records in accordance with the laws, a minimum taxable amount will be taken into account depending on the type of activity carried out by the permanent establishment. In no case, however, may the taxable amount be less than EUR 19.000. For resident companies that do not have introduced a tax return, the law provides for identical minimum taxable amounts.

Tax rates

The tax rate is the same as for resident companies. The basic rate is 33% increased by a 3% crisis contribution (surcharge) which brings the total rate at 33,99%. Under the same conditions, the lower rates may apply.

Transfer pricing

Belgium does not have a complete set of rules concerning transfer pricing in international relations and will therefore mainly rely on the OECD Report on transfer pricing.

Several specific anti-avoidance measures exist in order to prevent transfer pricing which is not in accordance with the arm's length principle. There are different measures dealing respectively with recaptures of profits:

- Any abnormal or gratuitous advantage granted by a Belgian resident company must be added to its taxable income, unless the advantage is taken into consideration in determining the taxable income of the beneficiary. Furthermore, in the case of advantages granted to non-resident related persons or to non-residents (including unrelated parties) located in tax haven jurisdictions, the taxable income of the paying company must be increased accordingly, without regard to the possibility that the advantage will be taxable abroad in the hands of the beneficiary. The tax administration has to prove the existence of the advantages as well as the abnormal or gratuitous character of it.
- After a ruling decision the taxable base may be adjusted (upward or downward) in case intra group transactions turn out to be not at arm's length.
- In case interests, royalties and fees for services are directly or indirectly paid to a foreign company that is not submitted to a normal income tax or to an income tax regime which is more favourable than that of Belgium. These payments are not deductible unless the taxpayer proves that the transaction is real and genuine and that the payment does not exceed a normal amount.
- The sale, transfer or contribution of stock, bonds, claims, patents, trademarks, processes or sums of money to any foreign taxpayers not subject to an income tax or enjoying a relatively favourable treatment, will not be taken into consideration by the tax authorities.

VAT

A foreign entrepreneur with a permanent establishment for VAT purposes in Belgium is, with respect to the activities of its Belgian permanent establishment, subject to the same VAT obligations as a Belgian resident entrepreneur. In this respect, the concept of

(permanent) establishment for VAT purposes is however different from the concept of permanent establishment for direct tax purposes.

A foreign entrepreneur is deemed to have a permanent establishment for VAT purposes if the following conditions are met:

- the foreign entrepreneur has a physical presence in Belgium (an office, a factory, an agency, a laboratory, a warehouse or any other establishment). As an exception, construction sites do usually not qualify as a physical presence;
- the establishment in Belgium is managed by a person who can legally bind the company in relation to suppliers and customers; and
- the establishment performs on a regular basis supplies of goods and/or services as meant in the Belgian VAT Code (irrespective of the fact whether these activities are taxed in Belgium or abroad, or whether they are subject to VAT or exempt).

For foreign entrepreneurs with no permanent establishment in Belgium different rules apply. They should only register for Belgian VAT purposes if they perform taxable activities in Belgium for which they are liable to pay Belgian VAT (i.e. no application of reverse charge). This can for example be the case when the entrepreneur performs in Belgium:

- Imports of goods
- Intra-community supplies of goods to other member states;
- Local supplies of goods or services to non-taxable persons;
- Real estate business

Etc.

D. Selling into Belgium

Direct selling from abroad

Income tax

For many non-resident businesses, the easiest way of conducting trade within Belgium is to sell directly into the country. This can be done through a variety of legal intermediaries, as commented under Chapter Two.

Direct selling into Belgium can take place either through a non-resident business or via sales personnel based in Belgium. Such staff can create a “permanent” (in case there is an applicable tax treaty) or “Belgian” (in the absence of an applicable tax treaty) establishment which leads to a taxable presence in Belgium.

If it is the intention to evade exposure to Belgian tax, then a creation of an establishment has to be avoided. Generally, this can be achieved by making the contractual arrangements outside Belgium through the non-resident head office and without the use of sales staff in Belgium.

To ensure that no establishment is being generated in Belgium, reference should always be made to the relevant tax treaty. Belgium has concluded double tax treaties with most of the industrial nations (see Appendixes). Whether the activities of a non-resident business constitute a taxable establishment in Belgium can be different from one treaty to another.

The majority of Belgian tax treaties will conclude to the existence of an establishment when the non-resident business maintains an office in Belgium, or when a dependent agent concludes contracts on behalf of the non-resident business.

VAT

In most cases, sellers performing direct supplies of goods or services from abroad into

Belgium will not be required to charge Belgian VAT or to register for VAT purposes in Belgium. Moreover, transactions via sales personnel based in Belgium will not necessarily create a “permanent establishment” for VAT purposes.

In B2B transactions, the Belgian business customer usually accounts for the Belgian VAT due via the reverse charge mechanism (intracommunity acquisitions or imports, services, local supplies of goods or local services).

In B2C transactions, the non-business customer (e.g. private individual), will in principle incur foreign VAT. There is an exception however:

Distance sales regime

The distance sales regime is typically aimed at mail order-type companies supplying large quantities of goods to private customers and non-VAT registered companies in other member states. Even if there is no physical presence whatsoever in Belgium, the mail order company will be required to register in Belgium (where its customers are based) and to charge Belgian VAT on its supplies if the following conditions are met:

The distance sales regime applies if the following conditions are met:

- goods are sold from another member state into Belgium;
- the non-resident supplier is responsible for transport of the goods to the customer;
- customers are private persons or businesses who are not required to account for acquisition VAT on their intra-community acquisitions of goods;
- the annual turnover of such supplies exceeds the amount of EUR 35.000.

Non-resident suppliers can also opt to subject such supplies to Belgian VAT, even if the threshold is not exceeded.

The distance sales regime does not apply to goods sold from outside the EU. In such case the recipient must in principle pay Belgian VAT to Customs upon importation of the goods.

The Belgian VAT treatment of direct sales of goods into Belgium can thus in principle be summarised as follows:

	EU supplier	Non-EU supplier
Business customer	Reverse charge - Customer is liable for Belgian VAT on intra-community acquisition	Customer is liable for Belgian import VAT
Non-business customer	Distance sales regime or Supplier to charge VAT of the country of dispatch of the goods	Customer is liable for Belgian import VAT

Selling through a Belgium based agent

Income tax

Persons whose activities may create a “Belgian” establishment for a non-resident business are so-called dependent agents, i.e. persons, whether employees or not, who are not independent agents. Such persons may be either individuals or companies.

It is not in the interest of international economic relations to provide that the maintenance of any dependent agent would always lead to a “Belgian” establishment, which is liable to Belgian tax.

According to most of the Belgian double tax treaties, there will only be a “permanent” establishment in Belgium when the dependent agent has the authority to conclude contracts on behalf of the non-resident business. This authority to conclude contracts

must cover contracts relating to operations, which constitute the proper business of the enterprise. The sale of goods will generally meet this qualification.

When a dependent agent has such authority and makes use of it repeatedly, then there will generally be a “permanent” establishment, hence a taxable presence in Belgium. If the dependent agent is a subsidiary company, a branch or a “permanent” establishment of the non resident company, then it must be assured that the transactions with the parent non-resident business are at arm's length.

For details reference can be made to Chapter Seven.

VAT

Selling through a Belgium based agent generally does not require a foreign entrepreneur to register for VAT purposes in Belgium and to charge Belgian VAT. The (in)dependent agent will usually not create a “permanent establishment” for VAT purposes.

In order to avoid risks, it can be recommendable to analyse the flow of goods and invoices between parties in detail from a VAT perspective.

In general commissionaires are invoiced for the total amount of the goods or services, minus the commission. The commissionaire will invoice the final customer and will take care of all Belgian VAT requirements.

In the case of agents, the customer is directly invoiced by the foreign entrepreneur. For the sales of goods, the same rules as for direct selling into Belgium apply. For services, the VAT treatment depends on the type of service and the type of customer (business or non-business). The agent will in principle charge its commission to the foreign entrepreneur free of Belgian VAT (reverse charge procedure).

Selling through a Belgium based distributor

Income tax

A distributor actually acquires goods from the non-resident business and resells them to customers in his own name. Where the distributor is set up as a separate company, the non-resident business should not create a Belgian tax exposure.

When an establishment acts as distributor, this establishment will be taxed on its Belgian profits (for more details, see point c) above).

At all times the mark-up made by the Belgian distributor needs to be carefully reviewed, as prices should be on an arm's length basis.

VAT

Supplies of goods or services from abroad to a Belgian based distributor generally do not require a non-resident supplier to charge Belgian VAT or to register for VAT purposes in Belgium. The Belgian distributor will account for any Belgian VAT due (both on the acquisition of the goods into Belgium as well as to any subsequent sales).

E. E-business

Business issues

There is no general definition of e-commerce. E-commerce generally refers to:

- the use of internet applications in order to reach consumers or suppliers, the placing of on-line orders and the making of on-line payments;
- the trading of electronic goods and services; and
- financial transactions over the internet.

E-commerce has given businesses increased autonomy and flexibility as to where to base their activities. It has changed traditional ways of doing business and in so doing raised new tax issues and opportunities. Businesses are rapidly adapting their strategies for e-commerce and updating their websites to take account of changes in the marketplace.

Every business needs to be aware of legal developments affecting e-commerce, for example changes to contract and intellectual property law, as well as changes in tax law.

Belgian law concerning e-commerce deals amongst others with contracting on the internet, the E-commerce European Directive, electronic signatures, liability of intermediaries, registration of domain names, codes of conduct and application of the competition rules to e-commerce.

Direct tax issues

In the field of direct taxation the main issues are:

- whether a website on a server situated in Belgium represents a taxable presence here. The OECD stated that a website itself, without the physical presence of a server, could not constitute a taxable presence. Furthermore, a web hosting arrangement or an Internet Service Provider (ISP) typically does not, principally, result in a taxable presence neither. However, the OECD stipulated that the disposal of computer equipment at a given location to carry out core activities of an enterprise might be considered as a taxable presence.
- to what extent profits are attributable to e-business activities in situations with related parties, i.e. transfer pricing issues. A discussion paper of the OECD figured out that, in the scope of “e-tailing” the amount of profit to be attributed to a taxable presence should be related to the nature of the functions that it performs.
- whether a payment represents a royalty in relation to the use of digitised products (e.g. on-line software and music). Generally if the customer utilises the product for his own purposes and is not exploiting it, then the payment would not normally represent a royalty, i.e. there would not be a requirement to withhold tax.

The above areas are subject to further review within the OECD and by the Belgian government. Up till now the Belgian authorities did not give any comment on these different points stated by the OECD.

At all times the mark-up made by the Belgian distributor needs to be carefully reviewed, as prices should be on an arm's length basis.

This distributor, as a separate company, will deliver goods and supply services that are subject to Belgian VAT.

VAT issues

VAT often represents a large proportion of a product's selling price and plays a major part in the pricing considerations of retail suppliers.

The principal VAT issues are the place of taxation of electronically supplied goods and services, and, to a lesser extent, whether the supply concerns goods or services.

For the purposes of VAT, e-commerce can be divided into direct and indirect e-commerce. Direct e-commerce is concerned with the supply of tangible goods and is comparable to shopping by catalogue. Indirect e-commerce encompasses transactions where intangible property, or digitised products, such as music or software are delivered electronically.

Direct e-commerce

In the case of direct e-commerce, the internet allows a prospective customer to access the vendor's website for ordering products. When a transaction takes place, the product is physically delivered in a conventional way, e.g. by mail. The VAT treatment of direct e-commerce is therefore no different from conventional goods transactions.

Consequently, for direct e-commerce within the EU, the rules for distance selling to non-business customers in other member states must be observed. Suppliers must register for VAT in Belgium if their annual turnover exceeds EUR 35.000.

Indirect e-commerce

The supply of digitised products which are delivered electronically are treated as the supply of services. Supplies to business customers are subject to a reverse charge: the Belgian business customer is liable to report and pay the VAT due to the Belgian State.

Electronically supplied services by a business established outside the EU to non-business customers in Belgium must be taxed where the customers usually reside, i.e. in Belgium. The non-EU business will have to register in Belgium and charge Belgian VAT to the Belgian customers. Suppliers can opt to register electronically and file electronic, quarterly VAT returns.

Electronically supplied services of EU business suppliers to non-business customers in Belgium are taxed where the business is established.

The taxation of electronically supplied services can thus be summarised as follows:

	EU Supplier	Non-EU Supplier
Business customers in Belgium	Reverse charge	Reverse charge
Non-business customers in Belgium	Taxation in member state of supplier	Taxation in member state of customer

In order to avoid the necessity of multiple VAT registration (in each member state), a ‘One-stop scheme’ has been implemented in Belgium. This scheme allows the non-EU supplier to register for VAT purposes in (only) one single member state and to comply with the VAT obligations of this member state for all the telecom services, broadcasting and/or e-commerce services the supplier performs for non-business customers located within the EU.

F. Ceasing to have a presence in Belgium

An investor may cease to have a business presence in Belgium in a variety of ways. This could arise through sale, insolvency or migration. Each will be considered in turn before we touch on the implications for individuals leaving Belgium.

Disposal of a business or subsidiary

The disposal of a Belgian business will involve various tax, commercial and legal issues.

Legal and commercial considerations on the disposal of a business

Legal agreements drafted to cover the sale of a business can be very complicated and typically include provisions for indemnifying the purchaser, should unforeseen liabilities arise. It is therefore vitally important, when selling a business in Belgium, that legal, accounting and tax advice is sought, e.g. in order to fulfil the formalities, necessary to limit the purchaser's liabilities.

Tax considerations on disposal of a business

Any capital profit on the disposal of a Belgian business may only be taxable in Belgium in the hands of the seller, if the seller is a Belgian resident or has a Belgian presence through a branch or agency. In some cases, no taxation is due.

If this is not the case, the seller will only need to consider his own domestic tax laws in relation to the sale.

Where the business is unincorporated, capital profits can arise on such assets as land and buildings, goodwill, intellectual property or equipment if sold for more than book value. They may be taxable at separate, flat rates on certain conditions.

Winding up a company

A business could cease to have a presence in Belgium either because it is insolvent or because the owners decide to close it down by a process of winding-up.

Legal considerations on insolvency and winding-up

Sometimes the words “bankruptcy” and “winding-up” (or “liquidation”) are used interchangeably, although a company can be wound up by its shareholders at any time without it actually being insolvent. If the company is insolvent, there are basically two things that can happen: filing for a procedure under the law on the continuity of undertakings or a bankruptcy.

When a procedure under the law on the continuity of undertakings is granted, the company can possibly survive thanks to a (temporary) protection against its creditors.

When the Court declares that the company is bankrupt, a professional insolvency practitioner must be appointed to realise the company's assets for the benefit of its creditors.

Only when the creditors have all been paid in full, the company's owners (shareholders) will be entitled to any remaining assets.

Directors of a company can be held personally liable when the company goes bankrupt in case of director's negligence or breaches against the company law, the laws on accountancy (incorrect bookkeeping) or against the articles of association or bylaws of the company.

A liquidation of a company by decision of its shareholders is subject to a specific procedure and involves an approval of the commercial court at the beginning (homologation of the appointment of the liquidator) and at the closing (approval of the plan for the partition of the assets) of the liquidation.

Tax considerations of insolvency, winding-up and striking-off

The fact that a company goes into liquidation does not alter its requirement to pay tax or to file tax returns (although the administrative responsibility for this will lay on the company's liquidator rather than on the company).

One of the main tax planning considerations will be that of maximising the use of any trading losses. These losses cannot be carried forward beyond a cessation of trading (exception) and therefore it is important to ensure the most tax-efficient timing of events. There are no special tax rules for corporate insolvency, winding-up or striking-off. A business will normally prepare a tax return related to the same period as its annual accounts, but the end date will be brought forward to the date of cessation of trade, if earlier.

Company migration

It is possible for a Belgian company to become non-resident for (legal and) tax purposes, as a result of the moving of its place of management (or even its legal company seat) outside Belgium. Likewise, a non-Belgian incorporated company could move its place of central management and control to (or again outside) Belgium.

In both cases there is a deemed disposal at market value of certain types of chargeable assets held by the company, at the time of migration. At the occasion of emigration, the company should therefore file a tax return, it will be taxed on the capital gains deemed to be realised.

Individuals leaving Belgium

The Belgian tax-residence status will be lost if an individual starts to live and carry on business outside Belgium for a substantial period. In this case, the individual may have to fulfil a lot of formalities. In any case, the facts will determine whether the individual will be considered as a non resident.

An anti-avoidance measure exists to prevent tax evasion by individuals who seek to move abroad temporarily to avoid capital gains tax, especially for capital built by pension plans. This anti-avoidance rules do not apply within the European Union.

Chapter Six



Entry into Belgium

The Act of February 2, 2001 states that all foreigners (non-Belgian residents) wishing to start professional activities in Belgium on a self-employed basis should obtain a professional card delivered by the Ministry. This does not apply, however, to nationals of member states of the European Economic Area (EEA) or foreigners, making temporary business visits to Belgium. The professional card is valid for a maximum period of five years. Professional cards issued for shorter periods can be extended to the maximum. The professional card can also be renewed.

Foreign employees have to obtain a work permit in order to be allowed to work in Belgium. An employer should obtain a work permit in order to employ a foreign employee. The legislation is very complex and includes numerous exceptions; e.g. Work permits are not required for nationals of the EEA member states, excluding Bulgaria and Romania. A simplified procedure exists for granting a work permit for so called “bottleneck professions” (= professions with a lack of candidates to carry out the specified working activities), e.g. several professions in the construction industry.

In order to guarantee legal employment in Belgium, as of 1st April 2007 employees, self-employed persons and apprentices who come to work in Belgium temporarily or partially must be reported to the Belgian social security authority in advance. In principle, a Limosa-declaration must be filed via electronic application (www.limosa.be).

Foreigners also need to obtain a Residence Permit in order to reside on an ongoing basis in Belgium.

Applications for all above-mentioned documents should be made well in advance, as the administrative procedures can take some time.

Employee rights

The Belgian labour legislation gives extensive rights and protection to employees, including:

- guaranteed income in the event of illness or labour accidents;
- a yearly holiday, with single and double allowances for white collar workers;
- in most of the business sectors a mandatory end-of year bonus amounting to a one month salary;
- compensation in the event of unemployment;
- entitlement to 15 weeks maternity leave, paid entirely by social security.

Social security

Belgian law requires Belgian employers and individuals working in Belgium under contracts with Belgian employers to make social security contributions based on gross monthly compensation. In case of an international working environment, the old EU-Regulation 1408/71 or the new EU-Regulation 883/2004, depending on the circumstances, or bilateral treaties may determine which country is entitled to levy the contributions, and where allowances can be claimed.

For the purpose of Belgian social security contributions on employees, all forms of income, including salaries and benefits, are envisaged. The social security rates are applicable to the unlimited amount of the income. The general rates for social security contributions vary between 34% and 52% (depending on the employment of a white collar or a blue collar worker and depending on the business sector) for the employer (paid on top of the gross wages of the employee), while in principle another 13,07% is deducted from the employee's income. The social security contributions for the account of the employee (13,07%) are withheld from the monthly gross wage by the employer.

If certain conditions are met, the employer could be entitled to reductions of the employer's contributions which would lead to a substantial reduction of the total costs for the employer.

The total amount of the social security contributions is paid by the employer to the social security office. It is the employers' responsibility to ensure the payment of social security contributions.

Self-employed persons pay their social security contributions to the social insurance fund they are affiliated to. The contribution consists of a lump sum minimum amount, or a percentage of the professional labour income of the self employed. (maximised, however, at a certain level).

The rates applicable are detailed in Appendix I.

Income tax

Taxable persons

All individuals who have the status of resident in Belgium are liable to personal income tax. An individual who is domiciled in Belgium or whose seat of wealth is located in Belgium, is regarded as a resident. Special rules apply to foreign employees temporarily residing in Belgium.

“Domicile” refers to a factual situation characterised by the actual disposal of a residence or living quarters in Belgium to which the individual regularly returns. Leaving abroad temporarily without his family does not imply a change of domicile if the individual keeps his house in Belgium.

“Seat of wealth” refers to a factual situation characterised by the actual disposal of a residence or living quarters in Belgium to which the individual regularly returns. Leaving abroad temporarily without his family does not imply a change of domicile if the individual keeps his house in Belgium. *able property, securities, receivables,...* are located, is not a determining element.

Unless evidence of the contrary, all individuals listed in the National Register of Individuals shall be considered as residents. Individuals of which the spouse and children are Belgian resident, will be considered as residents as well.

Individuals who are not considered as residents are taxable on their Belgian sourced income under Belgian non-resident income tax. Non-resident individuals are not chargeable to income tax on any non-Belgian source income, even if remitted to Belgium. In case of doubt whether one should be considered as resident in one state or another and therefore be taxed in that state, the answer may in general be found in the tie breaker rules as included in most of the double tax treaties applicable.

Taxable income

For the purposes of personal income tax, total taxable income is the aggregate of net income or profits arising from an occupation or business (earned income), real estate, personal property (in some cases), and miscellaneous sources, less eligible deduction. (see Chapter Six).

Any benefits provided by an employer in connection with employment are usually taxed in the same way as any other remuneration, although the taxable value assessable varies according to the type of benefit provided. Benefits frequently granted in Belgium are: company cars, accommodation and lunch vouchers.

Further to most double tax treaties, foreign income is in principle taxed in the country from where it originates. For this purpose, employment income is treated as sourced, where the duties are carried out, and not from where payment is made.

Tax rates

Income tax is charged at progressive rates as set out in Appendix I. Belgium applies for a progressiveness reserve: foreign income is first taken into account in order to calculate the Belgian progressive tax rate. Later, the part of the aggregate income originating from countries with which Belgium has signed a double taxation agreement is eligible for a proportional tax reduction.

Years of arrival and departure

In Belgium a person can be treated as a resident and a non-resident within the same tax year. This can be the case for example when a person, until that moment a resident, moves with his family abroad as from the first of June, but there still remains an important real estate property in Belgium for which Belgian taxes are due. For the period starting from January to May he will be considered as a resident; after that period he will be considered as a non resident.

Foreign employees working temporarily in Belgium

The Belgian tax authorities have set up a favourite system for taxing foreign employees, working for employers who are part of an international group. The employer must introduce a request to the tax authorities within six months as from the start of the employment in Belgium.

Only senior foreign employees, who are either transferred to Belgium or who are directly hired from outside Belgium, can benefit from these special taxation regulations. The regulations specify that the employee must have a management position or a high-level academic background outside Belgium, before coming to this country. Non-specialists working in a specialised area can also be subject to the expatriate tax regulations.

Though the assignment in Belgium must be temporary, the special tax regulations are, in principle, applicable for an unlimited period of time.

The foreign executive will have to prove that the centre of his economic interests is maintained outside Belgium.

Following factors are taken into account by tax authorities, demonstrating that an individual still has economic interests abroad:

- the residence of the family abroad;
- the availability of a house outside Belgium;
- the fact that the children go to school abroad or to an international school in Belgium;

- the ownership of real estate abroad;
- the continued participation in a non-Belgian group insurance policy or any other non-Belgian pension or savings plan, and
- a clause in the lease permitting termination in case of transfer abroad (Diplomatic Clause).

As a result, the foreign executives with temporary assignments will, for Belgian tax purposes, qualify as non residents.

Under the special rules, within certain limits, expatriate employees are not taxed on non-taxable allowances, which are defined as reimbursements to employees for additional expenses incurred as a result of moving to Belgium. These allowances are divided into one-time expenses and ongoing expenses.

Allowances for one-time expenses include moving expenses, costs of establishing residence in Belgium and losses incurred on the sale of a car or house as a result of moving to Belgium.

Allowances for one-time expenses are unlimited.

Allowances for ongoing expenses include cost-of-living subsidies, allowances for housing, school fees, tax equalization, home leave, emergency trips, travel expenses for children studying abroad, losses incurred in renting a house located abroad and foreign-exchange losses. The total annual allowances for these ongoing expenses are limited to EUR 11.250 if the employee works for a commercial or industrial company and to EUR 29.750 if the employee works for a co-ordination center or a research laboratory center.

Travel exclusion

After excluding the non-taxable allowances, the global remuneration must be divided into a portion relating to professional activities in Belgium (taxable remuneration) and another portion attributable to professional activities carried out abroad (non-taxable remuneration).

Pension schemes

In Belgium the pension provisions are organised within the National Social Security system. The funds for these statutory pensions are provided for by the employer's and employee's social contributions.

Besides the statutory pension, a taxpayer can join a private pension scheme using one of the following formulas: pension savings, individual insurance contracts and group insurance contracts.

Pension savings

Up to EUR 880 for tax year 2011 per tax payer and per calendar year can give rise to a tax reduction, provided certain conditions are met.

The plan participant can open an individual savings account, a collective savings account or savings insurance.

“Withdrawals” are liable to tax only if a fiscal advantage (deduction or reduction) was granted, at least on one occasion, in respect of the “deposits” used for the building up of the capital. Moreover, the tax treatment differs according to the time when the built-up capital is surrendered, i.e. whether the withdrawal takes place before or after the age of 60.

The advance taxation is due when the plan participant reaches the age of 60. Withdrawals later may be made free of tax at any time. The plan participant is allowed to continue making contributions to the pension plan until he is 64 years old. Such contributions are not taxed. Nonetheless are they entitled to a tax reduction. After the age of 60 the tax is set at 16,5% for the capital built up with premiums paid until 31 December 1992 and 10% for capital built up with premiums paid as from 1 January 1993.

Individual insurance contracts

Since 1993, individual insurance contracts have been liable to the tax on long-term

savings. The tax is due only if a fiscal advantage (deduction or reduction) was granted, at least on one occasion, in respect of the paid “premiums”.

Insurance companies are subject to this one-shot taxation on the theoretical actual value of the life policy as soon as the assured reaches the age of 60, whether any surrenders were made or not.

The advance taxation amounts to:

- 16,5% of the theoretical surrender value, pensions, annuities or capital of the insurance policy, built up with premiums paid until 31 December 1992.
- 10% of the theoretical surrender value, pensions, annuities or capital of the insurance policy, built up with premiums paid as from 1 January 1993.
- 33% or against progressive rates (depending on the moment the premiums were paid) of the surrender value, when the surrender is made before the contractual termination date.

Group insurance contracts

A pension can also be built up with employer's and employee's contributions to an administered privately group insurance. For the employer the premiums are tax deductible to the extent that the benefits provided for, added to the statutory and extra-statutory pensions, do not exceed 80% of the last regular gross annual salary.

The personal employee's contribution entitles to a tax rebate, which is calculated at the “special average rate”.

Where a group insurance is liquidated on an authorised date (mostly on retirement), a separate assessment is made for the capital or paid surrender value. The amount paid is taxed at the following rates:

- For the capital built up with instalments made before 1 January 1993: 16,5%.
- For the capital built up with instalments made as from 1 January 1993:
 - 16,5% for the part related to employer contributions
 - 10,0% for the part related to employee contributions
- In case of activity up' till retirement at the age of 65 (or later): 10%.

Other forms of personal taxation

Inheritance tax / transfer duty

Inheritance tax is payable when the deceased was resident in Belgium and is levied on the value of property received by each beneficiary. The inheritance duty rates are progressive and vary with the degree of relationship between the deceased and the beneficiary (see Appendix I).

If the deceased is a non-resident, transfer duty is levied at the same rates as inheritance duty but only on the value of (real) property situated in Belgium.

The inheritance tax and the transfer duty upon death are calculated by means of a declaration. The property, which, according to the evidence supplied by the administration, the deceased disposed of as a gift in the three years preceding his death, is considered as part of his inheritance if the donation has not been liable to the donation duty.

The gross tax base is in principle the market value of the goods at the day of decease. Under certain conditions, debts can reduce this tax base.

Tax rates vary:

- according to the degree of kinship between the beneficiary and the deceased;
- according to the net share inherited by each of the heirs;
- according to the Region where the inheritance is opened: Walloon Region, the Region of Brussels-Capital or the Flemish Region of Belgium.

Registration duties

Registration duties are levied, as a rule, when a deed or written document is registered, i.e. for formalities which consists in copying, analysing or mentioning this deed or this written document by the collector of registry fees and stamp duties in a register drawn up for this purpose. In Belgium, two kinds of registration duties are applicable: proportional and fixed duties.

The best-known proportional duties are the gift taxes (rates as detailed in Appendix I).

The following must be registered, among others:

- deeds drawn up by Belgian notaries;
- writs and summonses by Belgian bailiffs;
- decisions and judgements issued by Belgian courts and tribunals which contain dispositions subject to proportional duty;
- private deeds or notarial deeds signed abroad, relating to the transfer or declaration of property or usufruct of property situated in Belgium or relating to the lease, sub-lease or transfer of lease of such property;
- records of the public sale of tangible movable assets drawn up in Belgium;
- private contracts and notarial deeds drawn up abroad relating to the contribution of movable or immovable assets to Belgian companies which are legal persons.

Finally, we would like to mention the existence of some other personal taxes, e.g. stamp duties, court fees, mortgage duties,...

Individuals, leaving Belgium

Belgian tax residence status will be lost if an individual is not domiciled in Belgium anymore, and if his seat of wealth is replaced outside Belgium. This may happen when an individual goes to work fulltime outside Belgium for a substantial period of time, but this is not necessary. If e.g. his family remains in Belgium, he will still be considered as a Belgian resident for tax purposes.

Again it will be the tie breaker rules as included in most of the double tax treaties applicable that should determine where one is resident for the application of the treaty.

Belgium has no anti-evasion rules in order to continue to levy income tax or inheritance duties after one has really emigrated, except for the taxation of pension capitals, built by pension plans (this is not applicable when moving within the European Union).



Appendix I: Tax rates in Belgium

Personal income tax

Main personal reliefs

Main tax-exempt income portion

A portion of the net global taxable income, varying according to the composition of the household, is exempt from tax. The tax-exempt income portion is in the first place composed of the exempt income granted to each of the spouses. The basic exemption is EUR 6.430 for a single person as well as for each spouse (income year 2011 – tax year 2012).

Exemptions for dependent children

These amounts are then increased by the exempt income for dependants and for certain particular family situations.

<u>Number of children</u>	<u>Exemption in EUR (income year 2009– tax assessment year 2010)</u>
1 child	1.400
2 children	3.590
3 children	8.090
4 children	13.020

For any child after the fourth, the exemption amounts to EUR 4.970 per child.

Progressive rates (income year 2011 - tax assessment year 2012)

<u>Taxable income</u> in EUR	<u>Marginal rate</u> %
0,01 - 8.070	25
8.070 - 11.840	30
11.840 - 19.130	40
19.130 - 35.060	45
more than 35.060	50

Corporate income tax

The tax rate is the same whether profits are retained or distributed. As from assessment year 2004, the basic rate is 33% increased by a crisis contribution (together 33,99%).

Reduced rates can be applied when the taxable profit does not exceed EUR 322.500. In order to qualify for these reduced rates, a company must fulfil, however, a number of additional conditions relating to the activities of the company, the shareholding of the company, the rate of return on the capital and the remuneration of their directors.

<u>Band of taxable Profit</u> in EUR	<u>Rate Applicable to Band</u> %
0 - 25.000	24,25 + 3% surcharge (24,98%)
25.000 - 90.000	31,00 + 3% surcharge (31,93%)
90.000 - 322.500	34,50 + 3% surcharge (35,54%)

Value added tax

0%	Newspapers and certain weeklies Goods for recycling
6%	Living animals; foodstuffs; non-alcoholic drinks; water supply; pharmaceutical products and medical equipment; books and periodicals; works of art, collectors' items and antiques; cars and their parts for the disabled, including repair and maintenance; coffins. Agricultural services; passenger transport; admission to cultural, sports and entertainment facilities; copyrights; concerts and performances; hotel or holiday accommodation; renovation and alteration of private housing older than 5 years; social housing under strict conditions, demolition and construction of immovable property in certain city-regions, funeral services. Repairs of bicycles, shoes and leatherwear, clothing and household linen.
12%	Restaurant and catering services (excluding drinks served), phytopharmaceutical products, margarine, tyres and inner tubes for agricultural use, certain solid fuels (i.e. coal), pay television and social housing.
21%	Standard VAT rate.

Social security contributions

The following table gives a general overview of employers' and employees' contributions due for the employment of blue-collar and white-collar workers (rate in force in the 1st quarter of 2010 under the assumption of less than 10 workers). However, the exact contributions vary in relation to the business sector to which the employer belongs and to the number of workers.

	Blue-collar workers		White-collar workers	
	As a % of the gross wage x 1,08		As a % of the gross wage	
	Employees Contribution	Employer's Contribution	Employees Contribution	Employer's Contribution
Pensions	7,50	8,86	7,50	8,86
Illness and Disability				
- Health Care	3,55	3,80	3,55	3,80
- Compensation	1,15	2,35	1,15	2,35
Family allowances	-	7	-	7
Unemployment	0,87	1,46	0,87	1,46
Annual holidays	-	6(*)	-	-
Wage retrenchment Contribution	-	7,48	-	7,48
Occupational diseases	-	1,00	-	1,00
Accidents at work	-	0,30	-	0,30
Several	-	2,07	-	2,07
Total	13,07	40,32	13,07	34,32

(*) Before 30 April of each year, the employer will have to pay an additional contribution amounting to 10,27%.

Self-employed individuals

Contributions are always calculated on the basis of the professional income the self-employed have obtained during the so-called reference year, i.e. in principle the third calendar year immediately preceding the year for which the contributions are due. For 2010, the professional income of 2007 is used as the calculation basis. For any beginning self-employed persons, the contributions are calculated provisionally.

Every three months, the self-employed pay their social security contribution to the social insurance fund they are affiliated with. The contribution consists of a quarterly determined percentage amount applied to the professional income of the reference year. The table below shows the contribution rates, excluding the administration costs of the social insurance fund (year 2010).

Portion of the year income (in EUR)	Contributions on year basis
Less than 11.824,39	EUR 2.601,37
Between 11.824,39 - 51.059,94	22,00%
Between 51.059,94 - 75.246,19	14,16%
More than 75.246,19	0%

Inheritance duties / Transfer duty

Inheritance tax is payable whenever the deceased was a Belgian resident. It is levied on the value of property received by each beneficiary. The rates are progressive and vary with the degree of relationship between the deceased and the beneficiary.

If the deceased is a non-resident, transfer duty is levied at the same rates as inheritance duty but only on the value of property situated in Belgium.

Inheritances opened in the Walloon Region

When the deceased's last domicile was located in the Walloon Region, the following rates are applicable.

Inheritances between lineal relatives, between spouses and legal cohabitants

Bracket of the net share (in EUR)		Tax rates in % Upon lineal relatives between spouses / legal cohabitants
From	to (including)	
0,01	12.500	3
12.500,01	25.000	4
25.000,01	50.000	5
50.000,01	100.000	7
100.000,01	150.000	10
150.000,01	200.000	14
200.000,01	250.000	18
250.000,01	500.000	24
more than	500.000	30

Inheritances between collateral relatives and between non-relatives

Bracket of the net share (in EUR)		Tax rate in %		
From	to (including)	Between brothers and sisters	Between uncles or aunts and nephews and nieces	Between all other persons
0,01	12.500	20	25	30
12.500,01	25.000	25	30	35
25.000,01	75.000	35	40	60
75.000,01	175.000	50	55	80
more than	175.000	65	70	90

Inheritances opened in the Region of Brussels - Capital

When the deceased's last domicile was located in the Region of Brussels – capital, the following rates are applicable.

Inheritances between lineal relatives and between spouses and between cohabitants

Bracket of the net share (in EUR)		Tax rates in % Upon lineal relatives and between spouses
From	to (including)	
0.01	50.000	3
50.000	100.000	8
100.000	175.000	9
175.000	250.000	18
250.000	500.000	24
more than	500.000	30

Inheritances between collateral relatives and between non-relatives

Bracket of the net share (in EUR)		Tax rate in %
From	to	Between brothers and sisters
0,01	12.500	20
12.500	25.000	25
25.000	50.000	30
50.000	100.000	40
100.000	175.000	55
175.000	250.000	60
more than	250.000	65

Taxable amount (in EUR)		Tax rates in %
From	to	Between uncles or aunts and nephews and nieces
0,01	50.000	35
50.000	100.000	50
100.000	175.000	60
more than	175.000	70

Taxable amount (in EUR)		Tax rates in %
From	to	Between all other persons
0,01	50.000	40
50.000	75.000	55
75.000	175.000	65
more than	175.000	80

Inheritances opened in the Flanders region

When the deceased's last domicile was located in the Flemish region, the following rates are applicable.

Inheritances between lineal relatives, between spouses and between cohabitants

Taxable amount (in EUR)		Tax rates in %
From	to	Upon lineal relatives, between spouses and cohabitants
0,01	50.000	3
50.000	250.000	9
more than	250.000	27

Inheritances between brothers and sisters or between “others”

Taxable amount (in EUR)		Tax rates in %	
From	To	Between brothers and sisters	Between “others”
0,01	75.000	30	45
75.000	125.000	55	55
more than	125.000	65	65

Gift tax

Donations of real estate between lineal relatives and between spouses

Portion of value of the gift (in EUR)		Tax rates in %
From	To (included)	Lineal and between spouses
0,01	12.500	3
12.500	25.000	4
25.000	50.000	5
50.000	100.000	7
100.000	150.000	10
150.000	200.000	14
200.000	250.000	18
250.000	500.000	24
more than	500.000	30

Donations to collaterals and non-relatives

Portion of value of the gift (in EUR)		Tax rates in %		
From	To (included)	Between brothers and sisters	Between uncles or aunts and nephews or nieces	Between all others
0,01	12.500	20	25	30
12.500	25.000	25	30	35
25.000	75.000	35	40	50
75.000	175.000	50	55	65
more than	175.000	65	70	80



Appendix II:

Example of corporate and personal income tax calculation

Corporate income tax

Determination of the taxable income – Tax year 2011 (income year 2010)

First operation: sum of the increase in the taxable reserves, the non-deductible expenses and the dividends.

1.	Increase in the taxable reserves	2.000.000
	Non-deductible expenses	
i.	Corporate income tax	2.000.000
ii.	Fines	150.000
iii.	Gifts	100.000
iv.	Capital losses on shares	<u>200.000</u>
		2.450.000
2.	Distributed dividends	<u>400.000</u>
	Total fiscal profits	4.850.000

Leaving out the exempt profits

i.	Profits exempt by treaty	490.000
ii.	Deductible gifts	85.000
iii.	Exempted dividends (95%)	<u>475.000</u>
	Total	(1.050.000)
3.	Deduction of certain income derived from patents ¹	(8.760)
4.	Notional Interest Deduction ²	(152.000)
5.	Deduction of tax losses carried forward e.g.	(450.000)
6.	Investment deduction e.g.	(126.920)
	Taxable base	3.062.320

¹ 80% of the income. E.g. income of 10.950 derived from patents.

² 3.8% of the equity capital as stated in the company's opening balance sheet of the taxable period. The capital is adjusted by eliminating, among others, certain items such as: shareholdings recorded as financial fixed assets and capital grants (subsidies). E.g. equity capital of 4.000.000.

Calculation of the tax liability

Tax due: $3.062.320 \times 33,99\%$	1.040.882,57
Increase because of insufficient advance payments	
a. $1.040.882,57 \times 2,25\%$	23.419,86
b. Advance payment before 10/04: $100.000 \times 3\%$	(3.000)
c. Advance payment before 10/07: $100.000 \times 2,5\%$	(2.500)
d. Advance payment before 10/10: $100.000 \times 2\%$	(42.000)
e. Advance payment before 20/12: $100.000 \times 1,5\%$	(1.500)
Prepayments	<u>(400.000)</u>
Total remaining tax liability	655.302,30

Personal income tax

The following calculation is for income earned in the calendar year 2009 tax year 2010 by a resident married couple with two children.

Determination of the taxable income

Net salary after social security contributions	
- Spouse A	30.000
- Spouse B	4.000
Net income out of commonly owned real estate	8.657,60
Miscellaneous income spouse A	<u>2.500</u>
Total taxable income	45.157,60

Calculation of global net taxable income

	Spouse A	Spouse B
Salary as an employee	30.000	4.000
Deduction for working expenses (a)	(2.729,43)	<u>1.148)</u>
Marital quotient (b)	<u>(6.184,77)</u>	6.184,77
Income out of real estate	4.328,80	4.328,80
Aggregated taxable income	25.414,60	13.365,57

- (a) These are the legally estimated expenses in the absence of evidence for effectively made expenses.
- (b) The marital quotient can be awarded when the earned income of one of the spouses does not exceed 30% of the couple's total earned income.
The amount then allocated is set at 30% of the total net earned income, less the own income of the spouse enjoying the quotient. It cannot exceed EUR 9.280.

Tax calculation of the aggregated income

	Spouse A	Spouse B
Basic tax (a)	8.981,07	3.827,23
Exempted income (a)	(1.607,5)	<u>(1.672,5)</u>
Total	<u>7.373,57</u>	2.154,73
Total family tax	9.528,30	

Tax calculation of global net taxable income

Total family tax	9.528,30
Tax on separate taxable income Miscellaneous income at 33% (a)	825
Municipal taxes (b)	621,19
Non-recurrent reduction	(250)
Total tax due	10.724,49
Special social security contribution	453,32
Special social security contribution	453,32
	11.177,81

- (a) This category of taxable income includes all income with the common characteristic of not being earned by performing a professional activity. Miscellaneous income is taxed separately. Amongst others, “occasional profits and proceeds” not connected with a professional activity are considered here.
- (b) Municipal taxes are due on the federal income tax. The rates vary among cities, but are approximately 5% to 9% of the amount of the individual's income tax. In the example above a rate of 6% is used.



Appendix III:

List of tax treaty

countries and withholding tax rates

	DIVIDENDS (1) (%)		INTEREST (2)/(6) (%)		ROYALTIES CERTAIN RENTALS (6) (%)	
<u>Treaty Countries:</u>						
Albania	5/15	(7)	5		5	
Algeria	15		15		5/15	(20)
Argentina	15/10	(7)	12		3/5/10/15	(14)
Armenia (ex-USSR)	15		15		0	
Armenia (new)	5/15	(7)	10		8	
Australia	15		10		10	
Austria	15		15		0/10	(17)
Azerbeidjan (ex-USSR)	15		15		0	
Azerbeidjan(new)	5/10/15	(19)	10		5/10	(21)
Bangladesh	15		15		10	
Bosnia-Herz. (5)	10/15	(7)	15		10	
Brazil	15		10/15		10/15/25	(9)
Bulgaria	10		10		5	
Canada	15		15		0/10	(8)
Canada (new)	15		15		10	
China P.R.	10		10		10	
Croatia	15/10		15		10	
Cyprus	10/15	(7)	10		0	
Czech Republic	5/15	(7)	0/10		5/10	
Denmark	15		15		0	
Ecuador	15		10		10	
Egypt	15/20	(7)	15		15/25	

	DIVIDENDS (1) (%)		INTEREST (2)/(6) (%)		ROYALTIES CERTAIN RENTALS (6) (%)	
Emirates (U.A.)	5/10	(7)	5		5	
Estonia	5/15	(7)	10		5/10 (22)	
Finland	5/15	(7)	10		5	
France	10/15	(7)	15		0	
Germany	15		0/15		0	
Greece	15		10		5	
Greece (new)	15/25	(7)	10/15		5	
Gabon	15/18		15		10	
Georgia (ex-USSR)	15		15		0	
Georgia (new)	5/15	(7)	10		5/10 (23)	
Hong Kong	5/15	(7)	10		5	
Hungary	10		15		0	
Iceland	5/15	(7)	10		0	
India	15		10/15		10	
Indonesia	15		10/15		10	
Ireland	15		15		0	
Israel	15		15		0/10	(8)
Italy	15		15		5	
Ivory Cost	15		16		10	
Japan	5/15	(7)	10		10	
Kazachstan	15/5		10/0		10	
Kyrgyzstan	15		15		0	
Korea (Republic of)	15		10		10	

	DIVIDENDS (1) (%)		INTEREST (2)/(6) (%)		ROYALTIES CERTAIN RENTALS (6) (%)	
Kuwait	10/0	(18)	0		10	
Latvia	5/15	(7)	10		5/10 (24)	
Lithuania	5/15	(7)	10		5/10 (24)	
Luxembourg	10/15	(7)	0/15		0	
Macedonia	15/10		15		10	
Malaysia	15		25/15/10	(9)	25/15/10	(9)
Malta	15		10		10/0	(8)
Mauritius	5/10	(7)	10		0	
Mexico	15/5	(7)	15/10		10	
Moldavia	15		15		0	
Mongolia	5/15	(7)	10/0		5	
Morocco	15		15		5/10	(8)
Netherlands	5/15	(7)	10/0		0	
New Zealand	15		10		10	
Nigeria	15/12.5	(7)	12.5		12.5	
Norway	5/15	(7)	15		0	
Pakistan	15		15		0/15/20	(8)(9)
Philippines	15/10	(7)	10/0		15	(9)
Poland	10		10/0		10	
Portugal	15		15		5/10	(10)
Romania	5/15	(7)	10		5	
Russian Fed.	10		10		0	
Senegal	15		15		10	

	DIVIDENDS (1) (%)		INTEREST (2)/(6) (%)		ROYALTIES CERTAIN RENTALS (6) (%)	
Serbia	10/15	(7)	15		10	
Singapore	15		15		0/15/25	(9)
Slovak Republic (3)	5/15	(7)	0/10		5	
Slovenia	15/10		15		10	
South Africa	5/15	(7)	0/10		0	
Spain	15		15		5	
Sri Lanka	15		10		10	
Sweden	5/15	(7)	10		0	
Switzerland	10/15	(7)	10/0		0	
Tadzhikistan	15		15		0	
Taiwan	10		10		10	
Thailand	20/15	(7)	10/25		5/15	
Tunisia	15		15		5/15/20	
Turkey	15/20	(7)	15		10	
Turkmenistan	15		15		0	
Ukrain	5/15	(12)	10		0/10	(15)
United Kingdom	5/10	(7)	15		0	
United States	5/15	(7)	15		0	
ex USSR (4)	15		0/15		0	
Uzbekistan	5/15	(7)	10		5	
Venezuela	5/15	(7)	10		5	
Vietnam	5/10/15	(13)	10		5/10/15	(16)

NOTES:

- (1) Where both the recipient and the company paying the dividend are subject to Belgium's corporate income tax, the dividend is exempt from withholding tax provided a minimum of at least 10% shareholding, which was or will be held uninterrupted for a minimum period of one year.
Where a Belgian subsidiary distributes profits to a EU parent company an exemption from withholding tax applies where:
 - (i) The parent and the subsidiary have one of the legal forms described in the EU Directive.
 - (ii) Both are subject to corporate income tax.
 - (iii) A minimum of at least 10% shareholding, which was or will be held uninterrupted for a minimum period of one year.
- (2) The following types of interest are not subject to withholding tax:
 - (i) Interest paid by Belgian banks to foreign banks.
 - (ii) Interest on commercial debts.
- (3) Tax rates for income paid or payable as of 1 January 2001.
- (4) The tax treaty with the former USSR applies to Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan.
- (5) Belgium has declared that the treaty with former Yugoslavia still applies to Bosnia-Herzegovina.
- (6) Under most tax treaties however there is a provision that the normal withholding tax

- (7) The lower rate generally applies if the recipient has a minimum holding of 10% or 25% of the share capital of the paying company.
- (8) No withholding tax nor the lowest withholding tax rate on copyright royalties (an exception is possible with respect to film royalties).
- (9) The higher rate applies to interest and royalties based on agreements conducted before 1 March 1990.
- (10) The rate is 10% for royalties paid as from 1 January 2002.
- (11) The 15% rate is applicable for granting a right of exploitation, to provide information concerning experiences.
- (12) The lower rate generally applies if the recipient has a minimum holding of 20% of the share capital of the paying company.
- (13) The 5% rate applies if the Vietnamese company holds at least 50% of the capital in the Belgian company. The 10% rate applies if it holds at least 25% (but less than 50%).
- (14) The rate of 3% applies to royalties for new items; 5% to copyrights; 10% to royalties for computer software, patents, trademarks, as well as for equipment leasing and know-how.
- (15) The 10% rate applies to copyright royalties.
- (16) The 5% rate applies to copyright royalties; the 10% rate applies to trademarks.
- (17) The 10% rate applies if the Austrian company owns more than 50% of the capital in the Belgian company.

- (18) The 0-rate applies to dividends paid to the Kuwaiti government or to a company owned for at least 25% by the Kuwaiti government.
- (19) The rate of 5% applies if the beneficial owner is a company which holds, directly or indirectly, at least 30 per cent of the capital of the company paying the dividends and has invested at least an amount equivalent to 500,000 US dollars in the company paying the dividends at the date of payment of the dividends. The rate of 5% also applies if the beneficial owner is a company which has invested at least an amount equivalent to 10,000,000 US dollars in the company paying the dividends at the date of payment of the dividends ; the rate of 10% applies if the beneficial owner is a company which holds directly or indirectly at least 10 per cent of the capital of the company paying the dividends and has invested at least an amount equivalent to 75,000 US dollars in the company paying the dividends at the date of payment of the dividends; the rate of 15% applies in all other cases.
- (20) 5% to copyrights; 15% all other cases.
- (21) 5% to copyrights; 10% all other cases.
- (22) 5% to the royalties paid for the use of industrial, commercial or scientific equipment; 10% all other cases.
- (23) 5% if the beneficial owner is an enterprise of that other Contracting State; 10% in all other cases.
- (24) 5% to the royalties paid for the use of industrial, commercial or scientific equipment; 10% all other cases.



Appendix IV:

Government agencies and trade bodies

Federal government agencies

Department of Economic Affairs

Guldenvlieslaan 87
1060 BRUSSELS
Telephone: 02 250 03 03
Fax 02 219 09 14

Department of Employment and Labour

Belliardstraat 51
1040 BRUSSELS
Telephone: 02 233 41 11

Department of Finance

North Galaxy
Koning Albert II-laan 33 bus 70
1030 BRUSSELS
Telephone: 02 233 82 11

Department of Foreign Affairs, Foreign Trade and Development

Quatre Brasstraat 2
1000 BRUSSELS
Telephone: 02 516 81 11

Department of the Self-employed and of Agriculture

Maria-Theresiastraat 1
1000 BRUSSELS
Telephone: 02 211 06 11

Department of Social Affairs, Health and Environment

Public Service Centre
Esplanade building 7
Pachecolaan 19
1010 BRUSSELS
Telephone: 02 210 45 11

Department of Mobility and Transport

City Atrium
Vooruitgangstraat 56
1210 BRUSSELS
Telephone: 02 277 31 11

Public Office for Labour Conciliation

Keizerslaan 7
1000 BRUSSELS
Telephone: 02 515 41 11

Public Office for Social Security

Victor Hortaplein 11
1060 BRUSSELS
Telephone: 02 509 31 11

Public Office for Finance

North Galaxy
Koning Albert II laan 33
1030 BRUSSELS
Telephone: 02 576 21 11

Flemish government agencies

Services of General Government Policy

Boudewijnlaan 30

1000 BRUSSELS

Telephone: 02 553 59 68

Department Flanders International

Boudewijnlaan 30

1000 BRUSSELS

Telephone: 02 553 60 32

Department of Foreign affairs, economy and agriculture

Martelarenplein 19

1000 BRUSSELS

Telephone: 02 552 60 00

Department of Administration and tourism

Arenbergstraat 5

1000 BRUSSELS

Telephone: 02 552 69 00

Department of Finance and Budget

Koning Albert II-laan 19

1210 BRUSSELS

Telephone: 02 553 54 05

Department of Culture, Youth, Sports and Media

Arenbergstraat 9

1000 BRUSSELS

Telephone: 02 553 69 77

Department of Welfare, Public Health and Family

Markiesstraat 1
1000 BRUSSELS
Telephone: 02 553 31 24

Department of Science and Innovation

Martelarenplein 7
1000 BRUSSELS
Telephone: 02 553 70 00

Department of Employment and Social Economy

Markiesstraat 1
1000 BRUSSELS
Telephone: 02 553 44 27

Department of Agriculture and Fishing

Leuvenplein 4
1000 BRUSSELS
Telephone: 02 553 63 40

Department of Mobility and Public works

Koning Albert II-laan 20 bus 1
1210 BRUSSELS
Telephone: 02 552 66 00

Flanders Investment and Trade Agency

Gaucheretstraat 90
1030 BRUSSELS
Telephone: 02 504 87 11
<http://www.flanderstrade.be>

Government agencies for the Brussels and Walloon Region
can be obtained upon request.

Financial institutions

Belgian National Bank

De Berlaimontlaan 14

1000 BRUSSELS

Telephone: 02 221 21 11

Euronext Brussels

Beurspaleis

Beursplein

1000 BRUSSELS

Telephone: 02 509 12 11

