

# **Doing Business in Belgium**

**2010**



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# 1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Belgium has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at January 2010.

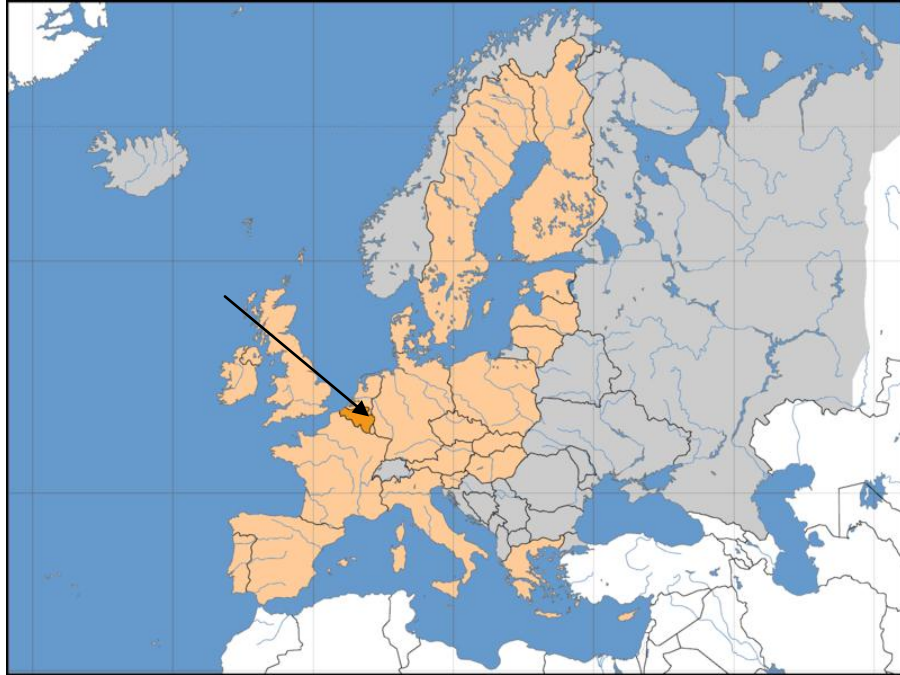
We look forward to helping you do business in Belgium.

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## 2. Business environment

### Generality

### Country and nation



Belgium is a small country (32,545 sq km) at the centre of the most significant industrial and urban area in Western Europe. Belgium lies at the heart of Europe (an incomparable geographical location).

London, Paris, Amsterdam and Frankfurt are only 200 miles away from Brussels, the capital of Belgium.

Since the end of the Second World War, Brussels has occupied a key position in the network of European cities thanks to its many assets (central location in Europe, multilingual nature, pro-European policy, diverse population and so on), all of which have served to attract the headquarters of major international institutions to the city. Belgium has been chosen as the headquarters of the European Community, the North Atlantic Treaty Organisation (NATO) and over 1,000 major international business firms.

Belgium is well served by all modes of transport:

- By road, the Belgian motorway system is modern and well developed. Every kilometre of highway is lit all night long and toll-free. Seven international expressways connect the country to

the French, German and Dutch motorways. The proximity of the Eurotunnel (linking the Continent to the UK) is an additional asset.

- By rail, Belgium's railway is one of the most concentrated in the world.
- By air, Brussels National Airport offers a range of intra-European and international flights. Thanks to permanent upgrading, the activities on the regional airports of Charleroi, Liege, Antwerp and Oostende are expanding, with growth both in freight and passenger traffic. Brussels airport is also well connected with other European international airport such as Paris, Amsterdam, London and Frankfurt.
- By water, Belgium offers world-class water transport facilities with the port of Antwerp (second largest seaport in Europe). Rivers and canals expand across the country, establishing a highly developed inland waterway system and connecting it to the main rivers and canals of the neighbouring countries. Moreover, the ports are fully integrated with the road and rail networks and, as such, are a prime example of multimodality.

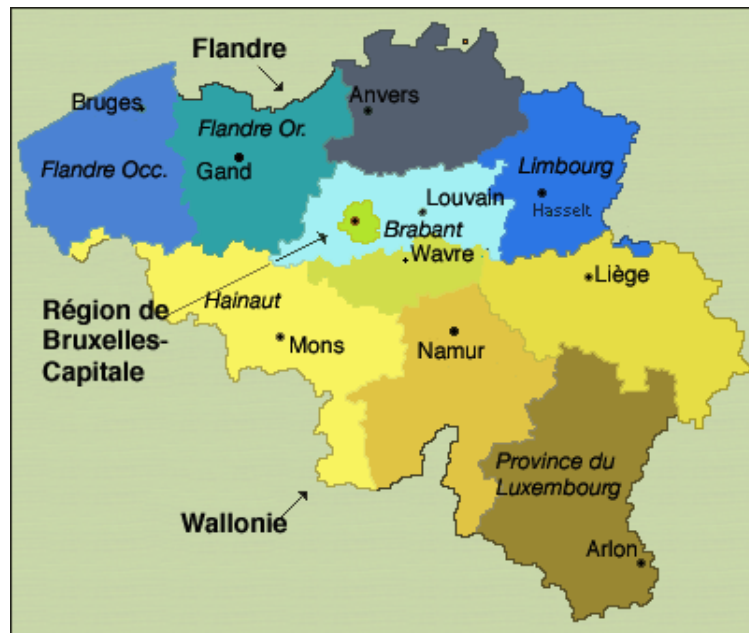
Belgium's workforce is multi lingual, skilled (the Belgian educational system is reputed for its quality), motivated (very low absenteeism) and very productive. Brussels' rental costs are very attractive compared to its neighbouring cities.

Belgium offers a variety of advantages to foreign investors, employees, and managers in the country (language's facilities, nice living environments, worldwide recognised quality in restoration, private international schools, international clubs etc.).

### **Regions, communities and languages**

There are 3 regions of Belgium:

- Flanders → Capital: Brussels
- Brussels
- Wallonia → Capital Namur



The Belgian population is made up of more than 10 million people:

- 1 million live in the capital, in Brussels
- 6 million live in Flanders
- 3 million live in Wallonia.

There are three main Communities:

- The Flemish community
- The French community
- The German Community.

The three official languages of Belgium are Dutch, French and German. Some six million Belgians are Dutch speaking and live in the northern Flemish provinces. Three million live in the southern Walloon provinces and are French speaking. German is also an official language, but spoken only mostly in a small community bordering Germany. The capital, Brussels, is officially bilingual.

We can confidently say that most Belgians are more than capable of expressing themselves in English as well!

### **Government**

Belgium is a constitutional Kingdom and the current King is Albert II and a Federal state.

Each region of Belgium is responsible for the environment, regional development, town planning, conservation, housing, scientific research,

energy, employment and regional economic policy within their borders. Some competences, however, are shared with the Federal state.

### **Banking system**

The Belgian banking system is controlled by the Belgian National Bank, which is responsible for all financial and monetary operations within the country. The Belgian Banking and Financial Commission closely supervise all activities within every sector.

The best represented banks are “BNP –Fortis” (ex Générale de Banque), ING ex BBL) and KBC (or CBC) but all of the main foreign banks, such as MORGAN Guarantee Trust Co, UBS, etc. are also very well represented in Belgium.

The Brussels Stock Exchange is the most important financial institution. Certain qualifications are required for obtaining a quotation on the Brussels Stock Exchange. In the case of foreign companies, the approval of the Minister of Finance is required. A large number of funds have been set up to provide venture capital to young and high-tech companies.

Belgium’s currency is the Euro.

### **Economy**

Belgium has a well-developed economy and all of the economic sectors are individually well represented in Belgium.

Belgium imports nearly all of its raw materials, and exports goods, mainly machinery and transportation equipment, chemicals, metals and food products.

Belgium has also developed an international reputation in biotechnology.

### **Culture**

Belgium is the meeting point for Europe's two main cultures, the Germanic and the Latin. As a result, it has an open-minded position throughout the Continent.

### **3. Foreign investment**

Belgium guarantees the freedom to set up a company or branch to all foreigners (companies or individuals).

Foreign capital may be brought into the country without restriction. Income and operation profits may be repatriated without limit.

#### **Starting a business in Belgium**

Foreign investors have the choice between two big kinds of organisations:

- Branch of a foreign enterprise
- Domestic enterprise.

The 'domestic company' is a judicial entity different from its foreign mother company, though the 'branch of a foreign enterprise' has no judicial form. Both must meet several Belgian requirements (a subject further explored later in the piece).

#### **Business incentives and tax reliefs**

##### **General principle**

Non-discriminatory treatment is the general rule in Belgium. Foreign companies, subsidiaries or branches have the same legal obligations and can apply for all possible incentives as domestic companies can.

In order to achieve the best possible investment climate, Belgium's regions offer a comprehensive package of incentives, which can be mixed in such a way as to offer the optimal incentives combination. They range from direct aid as payment of a grant linked to an investment to favourable fiscal schemes, labour incentives and training measures.

##### **Tax incentives**

To favour investments in Belgium, the Belgian government has taken several measures in order to reduce the tax basis of companies under some specific conditions.

For instance:

##### National interest

A percentage of equity of the company (subscribed capital and retained earnings) is deducted from the tax basis

### Exoneration of some kinds of revenues

Are free of tax:

- 95% of the revenues coming from financial gains and dividends
- 80% of the patterns revenues

Some measures also have been taken to favour the investments in tangible or intangible fixed assets.

For instance:

### Deduction for investments

A percentage of investments in fixed assets can be deducted from the tax basis by the innovative companies.

### Reserve for investment

A part of the profit can be exempted from taxes if the company invests in fixed assets within a fixed delay.

### Spread taxation

The gain on the disposals of fixed assets can be reported if the company invests in other fixed within a delay.

Other measures have also been taken to favour some kind of activities.

For instance:

### Reimbursement of 75% of the withhold taxes on salaries for staff working in research & development activities.

### Tax shelter – corporate investments in the Belgian film industry

Investments in the Belgian film industry can lead to a tax exemption of 150% of the funds invested, with a maximum of 750,000 Euros in the audio-visual production (Belgian or European, but produced in Belgium). The investment company will receive one part of the exploitation right. A master-agreement should be signed between the Company and the Belgian (or European) producer. Depending upon the conditions in the master-agreement, the investment can be partially structured as a loan to the Belgian producer, but only provided that the loan does not exceed 40% of the total investment.

### **Financial incentives**

The regions are solely responsible for granting financial incentives. Thereafter, the grants are paid by the region where the company settles or invests. In general, the investment subsidy is granted either as an interest rebate or as a capital premium, or a combination of both, depending upon

whether the project is financed by a loan, self-financing or by a combination of both.

The system differs slightly from one region to another depending upon the relative weight of the factors that are taken into account by granting aid: number of jobs created, increased value added per job, the technology content of the project and its attractiveness for the region etc.

### **Labour incentives**

On top of the high investment subsidies accorded to companies creating new employment, a number of aids have been issued for new employment. In principle, they are managed by the regional authorities and there are some differences in the application (depending upon the region). Those aids consist in the form of a reduction of company social security costs.

Companies can, under certain conditions, obtain a temporary reduction of social security costs by:

- the hiring of the first employee
- the hiring of an unemployed
- the hiring of an additional employee
- the replacement of an employee
- the replacement of an employee interrupting his career.

Training incentives are offered by the Regional Authorities. They consist of organisational and financial aid for the training of personnel. This training can be performed either within the company itself or at a recognised training centre.

### **Export incentives**

The Belgian Foreign Trade Office provides information on foreign markets and trade fairs, as well as legal information on foreign trade. The goal is to attract new markets and develops contacts between Belgian exporters and foreign purchasers.

Temporary financial assistance is given by the Regional Authorities in case of exports to non-EEC countries through an interest free loan. The repayment of the loan is required only when a certain level of turnover has been achieved. Eligible projects must be related to the development of new markets for products and services that originate in Belgium.

The support can amount to 50% of the costs of exploration and penetration of the foreign markets.

For the export of equipment to non-EEC countries, an interest subsidy can be granted for a period of at least two years, so that the interest charged is comparable to that being offered by other competing industrial countries.

## 4. Setting up a Business

**Foreign investors who intend to conduct commercial activities in Belgium can choose from a wide range of legal entities. The choice will depend on business priorities.**

Foreign companies operating in Belgium have to decide whether they plan to operate through a branch (incorporated under the laws of the foreign country) or through a subsidiary (incorporated under Belgian law with the same legal structures as Belgian ones).

The companies can also be joined in a 'trading association' (association momentanée) or in limited partnership (association en participation).

All entities must be registered. The registration number must figure on all legal documents and invoices (incoming and outgoing). For a company liable on VAT, the registration number is also the VAT number.

### **Branch of a foreign enterprise**

Any foreign enterprise, which is a legal entity under the laws of its country, is entitled to conduct business freely within Belgium through the constitution of a branch (succursale - bijhuis).

However, a Belgian branch must fully comply with applicable Belgian requirements.

Before setting up the branch, some documents are needed:

- The company's articles of incorporation
- The extract of the foreign Registry of Commerce or similar office that certifies the existence of the company
- The resolution authorising the formation of the branch (including name, Belgian address, description of activities as well as a description of the branch official representative's powers).

These documents must either receive the "Apostille" or be certified by the legal foreign entity's Belgian consul. They should, also, be published in the official language of the Region where the branch has his statutory address.

The branch is considered as a permanent establishment and should be registered. This number must be indicated on all documents (invoices, head letter, blanks order or price lists, etc.).

A foreign company operating in Belgium through a branch must publish a consolidated financial statutory account (balance-sheet, profit & loss statement and appendixes according to Belgian legal presentation, names and addresses of directors and auditors etc).

For tax-return purposes the published accounts should be joined with a more detailed balance-sheet, profit & loss accounts and tax appendixes (same as a Belgian legal entity).

The branch has the same fiscal year as the foreign company.

Every law (labour, VAT, income tax, publicity, etc.) should be respected like a Belgian company.

Operating under the form of a Belgian branch is generally less popular than the creation of a local subsidiary. The main reason is probably that the liability of a branch is not limited so Belgian creditors' claims are extended to the assets of the foreign company.

Finally, foreign entities having a Real Estate in Belgium are, also, considered as a permanent establishment for every activity in relation to the Real Estate. Registration duties are applied. VAT and Income tax reports should be filled.

### **Trading Association (Association Momentanée - Tijdelijkehandelsvereniging)**

According to Belgian law, a trading association is a temporary association in order to achieve one or more fixed trading operations.

The trading association does not have its own legal entity and as a consequence the partners are fully liable towards their creditors.

The advantage of the trading organisation is the uncomplicated form of organisation with broad possibilities for contractual arrangements.

The trading organisation is often used in the building industry.

## Firms and their legal structure

Profit-seeking undertakings are further divided into commercial or non commercial entities.

The “profit-seeking” following company types can be used, although the stock corporation (S.A., N.V.) and the private limited company (SPRL – BVBA) are most common.

### Kind of legal form

- Private Limited Company- PLC (SPRL-BVBA)
- Stock Corporation- SC (SA-NV)
- Share Limited Partnership- SLP (SCA –CVA)
- Cooperative Company with Limited Responsibility- CCLR (SCRL)
- Cooperative Company with Unlimited Responsibility- CCUL (SCRI)
- General partnership (SNC-VOF)
- Private Limited Partnership (SCS- GCV).

The Companies Law determines the specificities related to each legal form. Behind, are listed the general rules and a schedule with the most differences between the different kind of companies.

In response on the financial current crisis, a new kind of private limited company has been created: the “Private Limited Company - Starter” in order to enable young entrepreneur to set up their business. However, specific rules and conditions must be met.

### Setting up

- The *number of associates* differs (2 or 3 minimum) according to the type of companies (see summary table). There is a specific kind of PLC which provides 1 associate.
- In the summary table, is mentioned the minimum *subscribed capital and the minimum paid-up capital* for each legal form. Capital can be paid only for 25% of the subscribed value if the minimum requirements are met and if the shares are nominative. The *capital* can be paid by contributions in cash or in kind for which an economic valuation is required.

In both cases, the founders of the company must supply the notary with a financial plan showing that the subscribed and paid capital

of the company is sufficient for its normal operating requirements over the next two years.

- In accordance with the Belgian law, each person appearing in the statutes of constitution is a *founder* except for the SC. Responsibility of the founders can be jointly questioned in case of bankruptcy if the subscribed capital was clearly insufficient.
- *Shares* are generally nominative. Bearer shares are only possible in case of a public entity.

In case of a natural person who wants to transfer his activities to a company, he can choose between a contribution in kind or sales. For both, a special report of a chartered auditor is requested.

### **Board**

- In a SC, the *board of directors* is made up with at least three administrators unless there are only two shareholders. In this case, the number of administrators can be limited to two.  
In SPL and CCLR, the company can be run by one or more *directors*. The statute determines the number of managers, the terms and the power.
- The *term of office* of an administrator is limited to six years (for SC). In other cases, it can be limited or unlimited. When a manager of Private Limited Company is named in the statute, he can only be revoked of his mandate for serious grounds or with the unanimous agreement of the associates.

### **Control**

- The *control* can be entrusted to one or more *auditors* and must be entrusted if 2 of the following criteria are met:
  - Annual turnover (excluding VAT) : 7,300,000 Euro
  - Total balance sheet : 3,650,000 Euro
  - Number of annual average workers: 50. If the number of workers exceeds 100, the designation of an auditor is obligatory as well as listed company.
- If *no auditor* is named, each associate is able to carry out investigations of checking. He could be represented or helped by a *certified public accountant*.

### **Shareholders meeting**

- An ordinary shareholders meeting must be held once a year to approve the annual year accounts in the 6 months following the end of the accounting year.
- Extraordinary shareholders meetings can be held on the request of the board, of the auditor and of a part of the shareholders.
- Specific shareholders meetings must be held in some specific conditions.

### **Capital**

- Capital can be increased by a contribution in kind or in cash.
- In case of a contribution in kind to set up or to increase the capital of a SPRL, the capital must be totally liberated.

### **Incorporation by cash**

If the capital is liberated in cash, this money must be deposited in a Belgian financial institution account specially opened in the name of the company to be incorporated. The account and the funds must be reserved solely and remain frozen until the financial institution is advised by a notary that the company has been duly incorporated. An attestation is delivered to the notary. The founders sign the notary deed in person or by proxy.

### **Contribution in kind**

The board must justify the necessity and the valuation of the contribution in kind. An auditor must give an opinion about the valuation.

- The previous shareholders receive *a preferential subscription right*. The shares to subscribe in cash must be offered by preference to associates proportionally to the part of capital representing their shares.
- The *reduction of capital* is submitted to rules of *protection of the creditors* in case of repayment to associates.

### **Lifetime of the corporation**

Except if it is specified otherwise in the articles of incorporation, the lifetime of the corporation is unlimited.

### **Specificities related to the stock corporation**

There are two types of incorporation, by direct creation or by public subscription for starting with stock companies.

Specific formalities for incorporation by public subscription

- The founders shall present themselves in person or by proxy to the notary who will draw up the legal memorandum of incorporation which must be published, as well as other relevant information as required by law, with a view to finding potential subscribers;
- A meeting of subscribers must be held within three months;
- The capital will then be released;
- The report of this general meeting must be certified by the notary who shall ensure that the legal requirements have been met.

Formalities by direct creation:

The rules follow the same of those for the other legal form.

### **Specificities related to the Private Limited Company-Starter**

- Founders and partners: A Private Limited Company Starter must be constituted by one or more natural person.
- Capital requirements: capital can amount to only 1 € but the company has a deadline of five years to reach the amount of 18,550 €.
- Financial plan: the financial plan of the company has to be written by a professional as an auditor company as well as an accountant so as to avoid a bankruptcy due to a lack of experience.

### **Specificities related to Cooperative companies with limited responsibility (SC - CV) or with unlimited responsibility (SCRIS – CVOHA)**

- A minimum of three partners is required but the number of partners is unlimited. The amount of the contribution can differ for each partner.
- The Articles of Association (notary deed) must precise as to whether the responsibility of the co-operator is limited or unlimited. The capital is composed by a fixed amount and in addition, a variable amount.

- Characteristic of the Co-operative Company is that the partners can freely resign after the first six months of the year and enter the company freely for the entire year without formalities.
- Drawing up a certified act is not needed to establish whether the capital of the company goes down or up, as long as the minimum capital of 18,600 Euros is secured.
- Shares cannot be nameless; each shareholder must be known by name and registered in the register of shareholders.

### **The Limited Partnership (CVA or SCA)**

- The Limited Partnership resembles the Public Limited Company (NV or SA). Most of the legal requirements concerning the Public Limited Company consequently apply to the Limited Partnership.
- Characteristic of the Limited Partnership is that the liability risk is distributed differently among the (two kinds of) partners. The general partner is fully liable with all of his assets and as a rule manages the business. It is indeed a legal requirement that the director of a Limited Partnership must be a general partner. The “silent” partner is liable only to the extent of his capital contribution. Consequently, this association is not subject to corporate income taxation, but is to individual income tax.

	Private limited company	Stock corporation	Share limited partnership	Cooperative company with limited responsibility	Cooperative company with unlimited responsibility
<b>Responsibility of the shareholders</b>	Limited to contribution	Limited to contribution	General partners: jointly responsible Silent partners: capital investment	Limited to contribution	Jointly responsible
<b>Minimum of shareholders</b>	1	2	2	3	3
<b>Minimum subscribed capital</b>	18,550€	61,500€	61,500€	18,550€ (fixed shares)	-
<b>Minimum capital to be paid</b>	6,200€ if minimum 2 shareholders 12.400€ if 1 shareholder (SPLRU) 1€ if SPRL starter	61,500€	61,500€	6,200€	-
<b>founders</b>	founders	Founders + simple subscribers	Managing partner	founders	NA

## Non profit organizations

### Social Finality Companies

The companies with the legal personality enumerated to earlier, except for the European companies, are called companies with social purpose when they are not dedicated to the enrichment of their associates under condition of legal specifications in their notary's deed.

### Non-profit-making Association (ASBL)

- The non-profit making association cannot be devoted to industrial or commercial operations and cannot seek to get for its members a material profit.
- Held at the clerk's office of the commercial court is a file for each non-profit making Belgian or foreign association.
- In the event of plurality of open centres, the file is held at the clerk's office of the commercial court in the district, of which one of the centres of operation is established, with the choice of association. In this case, association indicates, in its acts and correspondence, the place where its file is held.
- The creation of a foundation (association) is the result of a legal document emanating from one or several persons or entities

consisting in assigning an inheritance to the realisation of a given, not involved, goal.

- The foundation cannot get a material profit either with the founders, neither with the administrators nor with any other person except, in this last case, if it is about the realisation of the not involved goal.
- An association can be recognised to be of public utility when it tends to the realisation of a work in philanthropic, philosophical, religious, scientific, artistic, teaching or cultural matter.
- The recognised associations of public utility carry the name of “public utility’s association”. The other associations carry the name of “private association”.
- A new piece of legislation has changed fundamentally the associations’ legal obligations, as well as accounting, publicity, etc. Only “small” non profit organization may follow simplified rules, other must be in compliance with the rules applicable for the companies.

Without going to great detail, a distinction is taken between “very big”, “big” and “small” associations and the legal obligations are different by theses criteria:

Criteria:	“big”	“very big”
Number of employees	5	50
Income	250,000 Euros	6.25 million Euros
Total of balance-sheet	1 million Euros	3,125 million Euros

“Big”: if two criteria are in application

“Very big”: if more than 100 employees (even if income and balance-sheet amount is lower than the mentioned criteria).

## Organisation of the companies

### The shareholders

Once a year, at the date and time fixed in the Articles of Association, a Shareholders Meeting should be held. The purpose of the ordinary shareholders meeting is the approval of the yearly financial statements, the allocation of results and the discharge of the board and auditors from their responsibilities for the closed accounting year and the re-election or dismissal of them. Resolutions are passed by simple majority.

Specific shareholders meetings must be called to approve specific operations such as an increase of capital, a change in the aim of the company, a change of the legal structure, a merge or a split, a change in the articles of association (incorporation) etc or in specific cases, such as a loss higher than the ½ of the capital etc.

An extraordinary shareholders meeting could be also called at the request of the directors and auditors or of shareholders representing at least 20% of the share capital.

The General Meeting may assign the individual right of investigation and control to the shareholders accompanied by a chartered accountant when there is no auditor.

### **The board**

The General Shareholders Meeting appoints the directors (in SA-NV they are at least two if there are only two shareholders and three in other cases). The total number of directors (depending upon the judicial form of the entity) shall constitute the Board of Directors. The directors do not have to be shareholders and there is no residence or nationality requirement. The daily management of the company's affairs may be delegated by the Board to one or more Managing Directors or even to a person not being a member of the Board of directors.

The term of their nomination cannot exceed six years. The directors may be re-elected. They bear responsibility to the shareholders and may be dismissed without cause by decision of the Shareholders' Meeting. They must also prepare an annual inventory and annual accounts, which should include the balance sheet and profit and loss accounts.

Furthermore, the directors are responsible for compiling a management report. The content of this report is prescribed by company's law. All these documents are submitted to the Shareholder's Annual Meeting.

It concerns operations such as:

- Mergers
- Splits and other comparable operations
- Contributions of universality or branch of activities
- Transfers of universality and branch of activity.

From 1 October 1993, the treatment of mergers (and similar operations) has been reformed. The liquidation of the companies involved is no longer necessary and there is now the possibility to carry out a tax-free

merger (no taxation of former reserves or capital gain arising on the merger) under the following conditions:

- the absorbing company is a Belgian company
- the merger is carried out in accordance with Belgian company law
- the merger or transfer of assets has a legitimate business purpose.

The absorbing company will take over the assets (and liabilities) of the target company at their original tax value and the transfer of assets is effectively treated as if it had taken place. It will issue new shares in remuneration of the net assets taken over.

The above rules have been extended to situations where a company transfers all of the assets and liabilities of its Belgian operations to one or more branches located in another member state of the European Community. The transfer must have a legitimate business purpose and the transferred assets must remain in a Belgian permanent establishment.

A special treatment is to be applied on the deductibility of cumulated fiscal loss.

### **Liquidation and winding-up of companies**

Companies may be voluntarily, following a decision of the shareholders, liquidated. Unless the liquidators are appointed by a General Meeting of shareholders, the directors of the corporation will be considered as liquidators.

The liquidation is a 2 step operation:

- First, the winding up, which needs a shareholder's meeting, specific reports and a published notarial deed;
- Second, the liquidation closure, which needs a published shareholder's meeting.

The taxation of liquidation is similar to a profit allocation.

The winding-up of a company can be decided by the Court after request of an interested third or the Public Ministry if the company has not published his financial statements in the course of the last three years.

### **Restructuring in Belgium**

On 1 April 2009, the Belgian Act on the Continuity of Enterprises came into force, containing new restructuring legislation designed to facilitate the reorganization of Belgian companies by providing them with a greater

number of options. Previously, a company had to choose between a judicial composition and a bankruptcy, whereas companies can now call upon a large number of measures in order to return to profitability, as an alternative to bankruptcy.

Under the previous Act, strict conditions had to be met in order for a voluntary bankruptcy to take place. A business had to be persistently unable to make debt payments or unable to obtain funding, and the obligation to petition for bankruptcy had to be made within a month. Notably, the process was not suitable for businesses experiencing temporary financial difficulties, as it meant that activities had to be stopped, contracts cancelled, and employees dismissed. As a result, this was highly prejudicial.

### **New alternatives**

The instruments alluded to above include the possibility for a company to choose between pre-procedural arrangements and three new court-supervised reorganisation processes. Pre-procedural arrangements provide several opportunities, including out-of-court agreements, which must be registered with the Court, and the possibility to turn to mediators and judicial representatives, appointed by the Court. If negotiations with the mediator or the judicial representative are successful, the procedural phase can be avoided. Conversely, if their actions are unsuccessful, those mediators and judicial representatives can be maintained during the procedural phase. The three new court-supervised reorganization processes include: (i) a settlement with a handful of key creditors under the supervision of a court, thereby allowing for quicker and confidential negotiations; (ii) a full reorganization plan with all creditors who have the right to vote on the plan; or (iii) a sale of all or part of the business under court supervision.

In this 'judicial reorganization', the Act allows companies to recover by suspending payments for a maximum duration of six months, albeit with the potential to be extended by 12 months. Other tools provided by this new Act include the possibility to nominate a 'mediator', whose role and remit can be defined by the company, in order to help with the reorganization. The mediator is assigned by the Court and must be totally independent.

Overall then, procedures have been simplified and terms have been more clearly defined, and can be used as soon as the viability of the company is threatened, when its problems are reversible. Furthermore, with simplified restructuring procedures, the new Act aims to encourage business continuity, with or without court supervision.

## **5. Labour**

### **Labour legislation in Belgium**

#### **Employment contracts**

A contracted person working with a firm commits himself to work and to follow the orders of the employer. The employer commits himself to employ the employee and pay a salary.

This 'subordination' determines the nature of the employee's status without consideration of manual or intellectual work. The status of 'independent' is generally prohibited when there is a relation of subordination.

Different types of employment contracts are required for manual workers, representatives, domestic servants and so forth. These contracts can be subscribed for a determined limited time, or for the realisation of specified work, but the most common are the contracts for an unlimited period.

The contracts for a limited period are strongly overviewed. It is forbidden to contract with an employee for a limited period more than twice. If well, the contract automatically becomes unlimited.

In each type of employment contract there is a trial period. For manual workers this probation period cannot be less than seven days without exceeding 14 days, for other employees the probation period fluctuates between one and six months. However it could be twelve months when the remuneration exceeds 31,000 Euros a year.

Employees are represented in parity committees that serve particular branches of industry. There are currently 100 parity committees. They determine the minimum salary levels and the general conditions of employment within the various sectors (branch of industry).

#### **Working hours**

On average, employment legislation lays down a maximum of either 7.5 working hours per day or 38 working hours per week.

Women and young persons are in principle prohibited from working nights. Overtime results in compensation or in additional payment. Flexible working hours occurs.

Full employment throughout the whole year gives minimal right to take 21 days holiday (if the employee works five days per week) during the following year. Some sectors give right to more.

The double holiday pay represents 85% of one month's gross salary.

Some sectors give right to a special allowance or bonus at the end of the year. It can reach one month's gross salary or more.

Normal retirement age is set at 65 years.

### **Dismissal**

The notice period for an employee depends upon his wage, the number of year's service with the firm (for instance, seven days whilst in the trial period, but it can reach one year after 10 years) and his age.

For manual workers this period is 28 days maximum. The notice period depends upon the number of year's service with the firm, the part, employer or employee, who has asked to leave the firm and the industry sector.

These periods are lower if it is the employees or workers who **have asked** to leave the firm (one to three months for employees, 14 days for workers).

### **Wages**

The parity committees determine the minimum salary levels. From there, the employers follow the employee's market salaries. (Studies, age, specialities, experience etc).

Some advantages can be offered, such as extra legal pension, car, etc. If the employee contributes in accordance with the tax rules, these advantages are taxed **and are not submitted on the social security costs.**

Overtime is compensated with a supplement payment of at least 50% of the normal rate and 100% if the overtime hours are worked during Sundays and public holiday.

The wages are linked to the movement of the cost-of-living index.

## **Guaranteed wages**

In case of illness or accident, an employee has the right to a guaranteed wage for one month; in the case of a worker, one week non-participation precedes. After the month has expired, social security intervenes.

## **Social insurance in Belgium**

The social insurance is a statutory insurance, which is compulsory for inhabitants.

Social insurance secures an income in case of:

- Unemployment
- Pension
- Disease
- Accident
- Annual holidays.

The contributions are composed on a company's cost plus a salary deduction. For employees, the company's cost is +/- 35% of the monthly gross salary and the employee's deduction 13.07%. For workers, the calculation is based on 108% of the monthly gross salary. The company's cost is +/- 41%; the salary's deduction the same, 13.07%. To retain on salaries and pay the total amount is the company's obligation.

On the top of that, a withholding tax should be retained on salaries by the employer and paid to tax authorities.

Many companies award their employees an additional private (i.e. non-statutory) pension on retirement (group insurance plan or pension fund).

Independent self-employed workers are active in most industries and contribute themselves to social security.

## **Employer and employee organisations**

Employers are organised into industry-wide federations (Fabrimetal, Febelchim, etc), which in turn combine to form the National Confederation of Belgian Industries (FEB-VBO).

There are three regional employers' organisations:

- the Flemish Economic Federation (VEV)
- the Walloon Industrial Union (UWE)
- the Brussels Federation of Companies (UEB/VOB).

Some employees are affiliated to trade unions. There is a trade union representing each political party.

### **Councils**

The National Labour Council is a body composed of an equal number of representatives from both employee and employer confederations. It is a consultative body, reporting to Parliament and the government on general social issues. It also advises on any questions of competence arising in the parity committees. It must be consulted in all legislative matters.

Both commercial and non-commercial enterprises, employing on average at least 100 people, must set up workers' councils; the council is elected once every four years.

In general, the council has decision-making powers in three spheres:

- fixing the dates of annual holidays
- the running of the company's social activities
- the framing and modification of regulations governing work.

Information must be given to the workers council by each company quarterly and yearly. The law mentions precisely the kind of the information required (competition, planned social evolution, financial statements etc.).

Companies employing on average at least 50 people must set up a health and safety committee.

## 6. Taxation

Before trying to offer the detailed rules of taxation in Belgium, they can be classified into four main groups:

- Direct taxes (income taxes)
- Value-added tax
- Registration tax
- Inheritance tax.

### Direct taxes (income taxes)

Under the terms of its tax sovereignty, the State has the right to subject to tax all of the elements which have a bond with its territory. This principle, called territoriality of the tax, appears under two aspects:

- territoriality of the people: the persons or entities domiciled in the country are taxable on the whole of their incomes including those which come from abroad;
- territoriality of the incomes: the incomes produced or collected in Belgium are subjected to the tax, even when they are obtained by persons or entities domiciled abroad.

Preventive conventions of the double taxation (territoriality of the tax) are signed with the main other countries.

The Belgian Code of income tax makes the distinction between the four categories of taxation:

- the personal income tax (IPP)
- the corporation tax (ISOC.)
- the tax on non profit organisations (IPM)
- the tax of non-residents (INR).

The IPP and the ISOC reach the total income of the taxpayer. The IPM is only focused on the incomes of the real goods, the incomes of the capital and movable goods and certain various incomes. The INR is established on the incomes collected in Belgium by the not-inhabitants of the Kingdom, foreign individual people, companies, partnership, joint stock companies, and the foreign morals people who are not a part of profit-making activity.

## **The individual income tax (IPP)**

### Taxpayers

Persons having their fiscal residence in Belgium could be taxed according to Belgian taxation rules, in Belgium, on their worldwide income.

Belgian tax authorities consider as fiscal residence the place where is situated the administration of the familial fortune disregarding the nationality. Exception is made for expatriates.

Those persons have to fill in an annual tax return based on the calendar year net income (with some adjustments regarding former years).

### Taxable income

Taxable income is the worldwide net income that the taxpayer has realised or received during the preceding calendar year.

This amount is analysed by nature (contrary of corporate income tax, except for associations like "ASBL"):

- Real Estate income
- Income from financial investment and movable properties
- Professional Income (remunerations, pensions, profits from commercial activity, profit from intellectual activity)
- Other income
- Profits from commercial or intellectual activities exercised during preceding years.

From this aggregate total net income, there are special deductions allowed like alimony payments, specified gifts and charitable contributions, day nursery costs and so forth. All of those deductions are submitted to miscellaneous conditions.

Individual income tax, itself, may be reduced within the limits fixed by the Belgian tax law by the amounts paid for life insurance, pension funds and mortgage capital.

### Rate of individual income tax

Taxable income is subject to a progressive income tax schedule. For fiscal year 2010, the rates are as follow:

- From 0 to 7,560 Euros: 25%
- From 7,560 to 11,240 Euros: 30%
- From 11,240.01 to 18,730 Euros: 40%
- From 18,730.01 to 34,330: 45%
- Over 34,330.01 Euros: 50%.

The agglomeration or municipalities are entitled to levy an additional tax (the average rate is 6-10% of the income tax).

The first 6,400.00 Euros net maximum income of each taxpayer is tax-free. This amount is increased considering the individual family situation of the taxpayer.

The incomes of both men and women are taxed separately according to the progressive tax rate.

### Tax payment

A tax is withheld each month on employees and corporate executive manager's revenues by the employers and paid to the administration.

Independent workers have to pay tax advances quarterly.

Interests and dividends are subject to a withholding tax at a rate of 15% to 25%, which is retained directly (by bank or distributing companies) before distribution.

This withholding tax is final and income should not be indicated on the tax return.

### Capital Gains

Untaxed if realised on private assets, by individuals acting in their private capacity.

Exceptions are:

- Gains realised on un-built upon land owned during the following periods after acquisition:
  - 0 -5 years : 33%;
  - 5 -8 years : 16.5%;
  - over 8 years : 0%;

- Capital gains (realised 0 – 5 years) on built upon real estate other than dwelling home : 16.5 %;
- Capital gains on important participation (more than 25% ownership) of Belgian companies sold to a non-Belgian legal entity are taxed at 16.5% (not applied in an EU context);
- Capital gains realised on shares when sold to a Belgian company if not taxed;
- The capital gains are taxed as earned income when realised by an individual within his business.

## **The corporation tax (ISOC)**

### Taxpayer

All companies resident in Belgium are subject to corporate income tax on their worldwide income. To avoid double taxation, Belgium has signed tax treaties with many different countries throughout the world. These treaties describe how the foreign income included in the total Belgian taxable income should be treated.

Branches of foreign companies having their fiscal residence in Belgium are also subject to Belgian income tax.

Foreign companies having Real Estate in Belgium are submitted to Belgian income tax as a result of their relation to this Real Estate.

Belgian tax law considers each corporate entity as a separate taxpayer and does not provide for a consolidation of the income and losses of a group of affiliated companies.

### Taxable income

Taxable income is the worldwide gross income that the company has realised without consideration of the nature.

### Deductions

All business expenses for earning or safeguarding income are deductible, unless, for some of them, the deduction is limited as well as for specific provisions.

Interest on capital borrowed for business purposes is deductible.

However, this deduction is submitted to conditions. For example, interest rates cannot exceed the normal market-rate; a part of the interest on loans granted by shareholders could be qualified and taxed as dividends etc).

This restriction does not apply to interest paid to Belgian banks or to recognised financial institutions.

Depreciation of business assets is calculated on the historical cost price. The law provides two methods of depreciation: the straight-line method and the declining-balance method.

Intangible fixed assets, except for investments in audio-visual materials, must be depreciated on a straight-line basis over a minimum period of three years for R&D investments, and over five years for the others.

Accelerated depreciation is available under law or administrative rulings for certain assets.

#### Tax losses carried forward

Losses can be carried forward without time limit. Previously, incurred losses may not be carried forward if there is a change in ownership which cannot be justified by financial or economic reasons. Carry-back of losses is not allowed.

#### “Notional interest” on “risked capital”

This new tax incentive (from fiscal year 2007, accounting year 2006) tries to correct the difference in the fiscal treatment between the invested capital and the borrowed capital and to attract investors.

A company has two possibilities to finance his activities:

- The borrow capital on which the interest is deductible
- The equity without the benefit of a tax deductible interest.

From 2006, upon the net taxable income, a deduction could be applied called “Notional interest” on “Risked capital”.

The rate of this interest is based on the State’s 10 years bonds linear average rate and is adjusted every year.

For accounting year 2009 it is 4.973% for SMS companies and 4.473% for larger companies.

The “risked capital” is equal to the equity as at the end of the previous year adjusted by:

- Certain assets net book value at the end of the previous period (proper shares, financial fixed assets, shares of investment companies. Nb. see also dividends treatment on this subject);
- Investments not taxed in Belgium (net book value of buildings and foreign establishment exempted from income tax in Belgium according to treaty signed with this foreign country);
- Unreasonable investment - avoiding overindulgence (assets not completely affected to professional activity, unproductive professional income etc);
- Some elements included in equity (according to Belgian legislation), like grants in capital, untaxed reserve covering unrealised gains on investments;
- The movement of those exclusions during the accounting year as well as the movement of the capital (increase, decrease) by prorata temporis.

The profit to carry forward is not taken into consideration as its appropriation is done during the following year by the shareholders meeting.

In case of loss for the accounting year 2009, the deduction for risked capital (“notional interest”) could be carried forward for seven years.

In case of a new company, the situation of the constitution date is taken into consideration.

#### Realised capital gains

Capital gains realised on shares are tax exempt (the loss realised is not deductible).

Capital gains realised on tangible and intangible fixed assets are generally considered as taxable profits and are taxed at the normal tax rate in the year of alienation.

However, capital gains realised on those assets under condition that they were acquired for business activity purposes, the depreciations allowed by fiscal rules and they were held more than five years before alienation, are subject to a deferred taxation regime considering the intention of the company to re-invest in other fixed assets.

This re-investment should be made on a depreciable (over at least three years), tangible or intangible fixed assets, not necessarily new, within three years from the first day of the taxable period in which the gain is

realised. If the re-investment concerns buildings, ships or aircraft, this period is five years.

After the period of three years (or five), if the reinvestment was not done, this capital gain is taxed at the normal rate with interests calculated from the tax year of alienation (for three or five years).

### Investment deduction

If the previous rule is not applied, investment deduction can be chosen. Investment deduction allows corporations and independent persons (incomes from commercial or intellectual activity) to deduct from their taxable income a certain amount (expressed as a percentage) of their investments acquired during the tax period.

As a rule, investment deduction is granted for all investments in new tangible and intangible fixed assets bought in Belgium and used for a Belgian professional activity. However, when the investor rents the investment to a third party, no investment deduction is granted.

The following investments are also excluded from the investment deduction:

- Investments that are not exclusively used for professional activities
- Investments that are financed by a co-ordination centre
- Investments in real estate that is acquired in order to sell it
- Investments which are non depreciable or whose depreciation period is less than three years
- Investments in cars.

Generally, the investment deduction is applied at one time. However, taxpayers (individuals as well as corporations) who employ fewer than 20 employees can opt for the delayed investment deduction, in which case the investment deduction is not applied on the invested amount, but on the depreciation of the investment.

For the fiscal year 2009, the investment deduction rates are:

- For individuals:
  - Standard rate 5.5%
  - Rate for investments in licences, energy and environment saving and R&D 22.5%
  - Delayed investment deduction rate 12.5%.
- For corporations:
  - Standard rate for small and medium size enterprises 3%

- Rate for investments in security for small and medium enterprises 22.5%
- Rate for investments in energy saving and R&D and for patents 15.5%
- Rate for investments in sea ships 30%
- Delayed investment deduction rate 10.5%.

The deduction amount calculated as below and not yet used (losses) could be carried forward without limit in time (except in the case of a change in company ownership or control).

#### Reserve for investments

From tax year 2007 (accounting year 2006), this incentive cannot cumulate with the new one, "Notional interest", over the three years mentioned above.

To stimulate investments by SMS companies, they can deduct a tax-exempted reserve from their taxable income under certain conditions.

The SMS Company should be subject to a reduced progressive tax rate. This investment reserve is tax-free up to 50% of the increase in taxable retained earnings in the taxable period, limited to 37,500 Euros (so, with the reserve amount being 50%, the maximum contribution is 18,750 Euros).

This reserve should be invested within three years from the first day of the taxable period in tangible or intangible fixed assets subject to fiscal allowed depreciation

Over the three years, without reinvestment, the reserved amount reintegrates the taxable income with the taxed at normal rate.

#### Inter-company transactions

##### Dividends

Dividends received by a Belgian company are 95% exempt from corporate income tax (in order to avoid double taxation) if the participation of the Belgian company in the dividend-paying company qualifies as a permanent participation (shareholder's company must hold a minimum of 10% in the capital or the participation should be (acquisition price) at least 1, 200 Euros).

Only shares that have the nature of “financial fixed assets” could be taken into consideration for the dividends-received deduction.

The following dividends are excluded from the exemption:

- Dividends from a company that are not subject to Belgian income tax or a similar foreign tax;
- Dividends from a foreign company resident in a country where the tax regime is substantially more favourable than in Belgium;
- A treasury, investment or financial company with a registered office in a country where these companies are subject to a tax regime other than the normal corporate income tax regimes in that country;
- Dividends from a company, as far as it realises profits through a foreign branch, subject to a tax regime that is considerably more favourable than in Belgium;
- Dividends from a company, as far as it realises an income other than dividends, which has its origin outside the land of fiscal residence, and which is subject in the land of fiscal residence to a tax regime differing from the normal tax regime;
- A company, other than an investment company, that repays dividends which themselves cannot be taken into consideration for the dividend received income for at least 90%.

### **Price of transfer**

Field of application between a Belgian resident company or establishment and a foreign company belonging to the same multinational group in their trade or financial relation.

### **Principle of fair competition**

The prices charged for transactions between dependent companies must be established by reference to the prices charged by independent companies. According this principle, the prices could be adjusted.

### Tax rate

The ordinary corporate income tax rate for the tax year 2009 (income 2008) is 33% (33.99% crisis tax included).

A reduced progressive tax rate is applied to SME's companies, under some conditions (see below). Those rates are:

Taxable income	% with crisis tax
From 0 to 25,000 Euros	24.98%
From 25,000 Euros to 90.000 Euros	31.93%
From 90,000 Euros to 322.500 Euros	35.54%

**Conditions:**

- The participation in other companies cannot exceed 50% of its capital, raised with the reserved profits in the company and the booked capital gains
- the proper capital cannot be held for more than 50% by one or more companies
- the dividends distributed cannot exceed 13% of the fully paid up capital
- a salary for at least 30,000 Euros should be granted to one of its directors (or 50% of the company's net result)
- the company cannot have participation in a co-ordination centre.

**Advance payment and assessment**

Corporate taxpayers and self-employed individual taxpayers could make quarterly prepayments to avoid in 2008, 11.25% annual tax addition. At the same time, depending upon the date of the advance payment, a "bonus" is granted for:

- 1st quarter's advance payment 15%
- 2nd quarter's advance payment 12.5%
- 3rd quarter's advance payment 10%
- 4th quarter's advance payment 7.5%

**The tax of 'moral entity' (IPM)**

**Taxpayers**

- The State, the Communities, the Areas, the provinces, the agglomerations, the federations of communes, the communes, the CPAS, the inter-commune CPAS as well as the public pertaining to worship
- people morals not subject to the ISOC
- non-profit making associations and the other people morals not working towards a lucrative end.

### Taxable income

The people morals concerned by the IPM are not imposed on the whole of their annual net income. In general, they are indebted tax only on their incomes subjected to withholding tax (on real estate or financial, movable incomes).

Certain taxpayers fixed with the IPM can, however, be also subjected to distinct contributions on other incomes or even on certain expenditure (such as capital gains on real estate or financial investment, disbursements not justified, some pension expenses etc).

### **The tax of non-residents (INR)**

#### Taxpayers

- the not-inhabitants of the Kingdom (physical people);
- certain comparable people with the not-inhabitants of the Kingdom;
- the foreign companies;
- the associations, establishments or organisations without legal personality, which are made up in a legal form similar to a that of a Belgian company and which do not have in Belgium their registered office, their principal establishment or their office of direction or administration;
- foreign States, their political subdivisions and local communities;
- all of the people morals not having in Belgium their registered office, their principal establishment or their office of direction or administration and not having an exploitation or operations in lucrative matter (such as the international organisations established abroad and of whom Belgium is member NATO, SHAPE, the EEC, etc).

### Taxable income

These taxpayers are not taxable “ratione personae”, since they have their domicile for tax purposes abroad. Consequently, they can be imposed in theory in Belgium only on the incomes produced or collected in the country.

These incomes understand principally the following categories; incomes of the real goods, incomes of capital and movable goods, benefit of the industrial, commercial or agricultural activities, profits of the liberal professions, benefit or profits of a former occupation, remunerations, pensions, revenues and allowances by holding place, incomes, whatever is

the qualification, of the activity carried on personally by an artist of the spectacle or a sportsman, and certain other various incomes.

Subject to certain exemptions, these incomes are taxed, according to the case, with the IPP, the IPM or the ISOC (see specific comments above).

### **Expatriates**

A special regulation for expatriates applies to foreign executives and researchers employed on a temporary basis in a Belgian permanent establishment of a foreign company, a subsidiary of a foreign company or in a Belgian company which is part of an international group.

### Taxable income

Expatriates qualified for this special tax regime are taxable only on their income from Belgian sources.

Refunds of expenses incurred by expatriates on behalf of the employer, as well as the income from foreign sources, are not subject to Belgian tax.

Refunds for house-moving expenses, reasonable expenses incurred to decorate a Belgian home, reasonable and duly justified school fees, and losses incurred on the sale of a car or house as a result of moving to Belgium are not taxable by their full amount.

All other refunded expenses duly justified (for instance tax equalisation, foreign exchange losses, home leave etc) are, also, not taxable in Belgium, but they are limited to:

- an annual amount of 11,250 Euros for executives working in commercial companies;
- an annual amount of 29,750 Euros for executives working in co-ordination or scientific research centres.

### **Foreign Tax**

Credited against Belgian tax liabilities or deducted from taxable income.

### **Tax Treaties**

There is an extensive network.

### **Value Added Tax**

Value Added Tax (VAT) is due by taxpayers in the exercise of their business activities on the delivery of goods and services in Belgium or the export - import of those ones from a non-EU country and the intra-community transactions between EU countries.

Normally, the VAT paid on the acquisitions of goods and services is fully deductible from the VAT applied on the sales of those. However, there are several limits of deduction (like 50% only on car expenses, 0% on representation costs or gifts etc).

Regarding exportation to a non EU country or EU country, the nature of transaction (influencing place of transaction) and the client VAT situation should be taken into consideration when deciding whether to apply Belgian VAT or not. However, due to the new directive "VAT package", it must be noted that there is a difference between the export of goods and services. Concerning the transaction of goods, the rules didn't change. There were 3 rules (with some dispensations on transportation, installation and assembling, gas, import, home shopping sales):

- A transaction on goods is subjected to the Belgian VAT when the transaction is located in Belgium
- A transaction of goods is located at the place where the goods are provided to the taker
- A transaction of goods is generally located at the place where the goods are before delivery.

On the contrary, related to services, the rule is to locate the service in the taker's country.

Exempt activities include the sale of real estate, some financial transactions such as the deposit and acceptance of funds, insurance brokerage, Belgian lawyers' and notaries' fees.

Foreign companies having Real Estate in Belgium are always submitted to the Belgian VAT rules.

The most used rate is

- 21%
- 0% (e.g. on daily papers, rents etc)
- 6% on goods classified as basic necessities such as food, travel, medicines, newspapers, books etc.

The special rates are:

- 1% gold as investment
- 12% social lodging, some agricultural products;

Construction:

- 21% is the normal rate

- 6% for the refurbishment of private real estate under some conditions like 15 years after the first occupation, schools, old folk's home etc
- 12% on the construction or acquisition of new buildings for social destination.

### **Registration tax**

As a rule, registration tax is due on all of the deeds which are drawn up by public officers, including the notary public and the bailiff. Nevertheless, every person can also register any deed which is not drawn up by a public officer, in order to give to that deed a fixed date or to preserve his rights (e.g. in rental cases).

The most frequent registration tax rates are:

- Real estate transfers (purchase, exchange, usufruct) on a Belgian site: 12.5% in Brussels and Wallonia, 10% in Flanders
- Mortgage 1%
- Rental contracts: 0.2% applied to the rent which has to be paid for the real estate during the time of the contract
- Donation: 3-70% (depending on the relationship and the amount).

### **Inheritance tax**

In the case of death of a Belgian resident, inheritance tax is payable by the beneficiaries on the value of the properties of the deceased.

In the case of death of a non-resident, inheritance tax is levied only on the real estate property located in Belgium.

The inheritance tax return must be filed within five to seven months after the decease's date (Death in Belgium: five months; in Europe: six months; out of Europe: seven months).

Gifts made in a three-year period preceding the death are subject to inheritance tax if the gifts were not included in the gift tax base.

Gift taxes are due on gifts of real estate located in Belgium and on gifts of movable property if the gift is expressed by means of legal instruments.

Gifts of movable property, such as money, bearer shares, works of art, donated "from hand to hand", are not subject to gift tax.

The rate of the inheritance and gift tax fluctuates between 0% and 80%, depending upon the taxable amount, the region and the proximity of the relationship between the deceased and the beneficiary.

### **Stamp Duty**

“Immatriculation tax” on vehicles (fixed amounts depending on fiscal horsepower and vehicle-age).

Tax on premiums paid into insurance contracts (1.40% to 9.25%).

### **Rulings**

In principle, a ruling can be asked on every tax-related topic, although the law foresees circumstances in which no ruling can be introduced. Besides traditional exclusions, such as a pending dispute or problems regarding recovery and prosecutions, no rulings will be granted with respect to direct taxes if the essential elements of the described transaction or situation involve a tax haven on the OECD blacklist, or if there is no economic substance in Belgium.

Tax authorities are bound by their reply for future.

This new ruling practice could be used as an alternative for the former advantageous tax incentives: co-ordination centres, distribution centres and service centres.

## 7. Accounting & reporting

The Accounting Law of July 17, 1975 reviewed by several Royal Decrees chiefly RD 30/01/2001, governs the content and presentation of annual financial statements. They prescribe the principles to be followed in preparing the annual financial statements, the format to be adopted, the publication requirements and the standard table of accounts that must be used. Those are adapted to the Fourth European Community Directive.

Belgian commercial law requires each corporation to keep books, accounting records and all documents for at least ten years.

### Statutory accounts

The published financial statements (statutory accounts) are standardized and include:

- A balance sheet
- An income statement
- Some annexes.

The prescribed annexes include:

- The result allocation
- The detail of some accounts
- The applied evaluation rules
- If applicable, information about the published consolidated financial statements
- The social balance
- The yearly report of the board
- The report of the chartered (registered) auditor.

The standard presentation can be shortened in the case of SME's if the SME doesn't belong to a group.

According to the Company Law, financial reporting must be issued in the six months (at latest) following the accounting closing date. All Belgian companies or Belgian branch offices of foreign companies must publish these annual accounts (in standard format) with the Commercial Court Office of the area in which the company or the branch is established in the month following the Shareholders Meeting approving them. Local Court of Commerce offices subsequently send copies of these accounts to the Central Registrar Office (Balanscentrale), where they are publicly available.

The annual report, which consists of the official balance sheet, profit and loss statement, notes to the financial statement, a directors' report and other prescribed information, must be drawn before at least one month of the shareholders' meeting date fixed in the articles of association. They should be published (publication is centralised by the National Bank of Belgium) in the month after the shareholders meeting approving the accounts. The shareholders meeting should be held in the six months following the closing accounting date.

The Belgian accounting system includes the following accounting principles:

- Fair statement of accounts
- Going concern
- Consistency of accounting principles and presentation
- Prudence
- Matching of income and expenses
- Separate valuation of assets and liabilities.

### **Result allocation**

Profits may, in principle, be freely distributed. However, 5% must be deducted from the profits and transferred to a legal reserve fund. This deduction ceases to be applicable when the legal reserve amounts to 10% of the share capital. Furthermore, no distribution of profits can be made if, after this deduction, the company's assets are reduced to less than the total share capital issued, plus all unavailable reserves.

### **Yearly report of the board**

This report must include some information such as prescribed in article 96.6 of the Companies law, for example:

- Comments about the financial statements and uncertainties;
- Significant events happened after the closing;
- Disclosures about the perspective of the company;
- Information about the financial derivatives;
- Etc.

Specific information must also be given in case of special operations such as an advance on dividend, interest conflict etc.

Detailed information must also be given about the financial situation if the losses become too significant. If the company presents loss for two consecutive years or there is a carried forward loss in the balance-sheet,

the Board must justify in their annual report the reason for keeping the valuation rules in going concern.

If, in the consequence of loss, the net equity becomes lower than half of the authorised capital, a general assembly must, except more rigorous description in the statutes, be joined together within a time not exceeding two months from the moment when the loss was noted or should have been under the terms of the legal or statutory obligations, in order to deliberate, if necessary, in the forms prescribed for the modification of the statutes, the possible dissolution of the company or possibly of other measurements announced in the agenda.

The board justifies their proposals in a special report held at the disposal of the shareholders to the seat of the company fifteen days before the general assembly. If the board proposes the continuation of the activities, it exposes in his report the measurements that it intends to adopt in order to rectify the financial standing of the company. This report is announced in the agenda. A copy can be obtained from it.

A specimen is also transmitted without delay to the people who carried out the formalities required by the statutes to be allowed at the assembly.

The same rules are observed if, in consequence of loss, the net equity is lower than the quarter of the authorised capital but, in this case, dissolution will take place if it is approved by the quarter of the voices emitted at the assembly.

When the general assembly was not convened in accordance with the present article, the damage undergone by the thirds, except contrary proof, is supposed to result from this absence of convocation.

### **Consolidated financial statements**

#### **Criteria:**

Certain firms (if two or more of the following criteria are met: annual turnover 25 million Euros, balance sheet totals 12.50 million Euros, 250 persons employed) are required to file consolidated financial statements in addition to their proper financial statements.

Each mother company with its subsidiaries, which exceed these criteria, must publish consolidated financial statements, except if the mother company is also a subsidiary which publishes consolidated financial statements.

This decision must be taken by a shareholders meeting. Information must be given about the consolidated statements of the higher level (Belgian or not), which must be available on the registered office of the Belgian company. If there is, however, a workers council, non published consolidated statements must be issued except if the workers council accept the decision of the shareholders meeting. The financial statements consist of similar information to that of the statutory accounts.

The financial statements must be issued in accordance with the Belgian GAAP or the IFRS one.

**Criteria:**

- Balance sheet total > 3,650,000 Euros
- Turnover (excl. VAT) > 7,300,000 Euros
- Employees >or = 50.

Each company which satisfies two of these three criteria must assign a chartered auditor.

The requirement to include all group companies in considering these criteria is applicable whether the company is member of a group which has the legal obligation to establish and publish consolidated accounts or not and whether the shares are registered at the stock exchange or not.

Furthermore, an entity with an average number of employees exceeding 100 will always be regarded as a big company.

The auditor has to be member of the Belgian Institute of Company Auditors.

**Nomination and duration**

The general meeting of shareholders appoints the auditor, usually upon proposal of the board of directors and determines the auditor's fee. The general meeting of shareholders has to decide on the number of auditors required. If more than one auditor is appointed, a "college" of auditors is formed.

Auditors are appointed for a renewable period of three years and may be released from their duties before the expiry of this three-year period only for substantive reasons.

The nomination must be published.

The workers council has a consultancy right and must agree to the person of the auditor(s) suggested by the board before the shareholders can appoint the auditor. If the workers council and the management cannot agree to choose an auditor, it is the Court who assigns one.

They are appointed for a renewable three-year term.

### **Mission**

The auditor audits the financial situation of the company, the annual accounts and verifies the sincerity of the transactions underlying the annual accounts. He has to give his opinion on these matters in a report addressed to the shareholders 15 days before the annual general meeting.

The issued report is a standard report in accordance with the UE directives.

In addition, for corporations with more than 100 employees, which are obliged to have a workers council, auditors must report on financial information derived from the books and records of the organisation and on information supplied by the management of the workers' council.

### **Fees**

The fees must be fixed for the 3 year period.

They may not receive significant additional fees for additional tasks other than those mentioned in the law.

Fees for the audit or other matters are mentioned in the annex of the year accounts.

### **SMEs**

Small companies do not have a legal obligation to appoint an auditor. However, they have the possibility to request their services for i.e. implementing right internal control procedure or to receive an outside approbation of the account, etc. (Some transactions request audit report according to Belgian legislation without regard of company size).

In companies where no auditor is required, the shareholders may ask for assistance by an accountant registered with the Belgian Institute of Accountants.

## **IAS / IFRS**

Only big companies consolidating their accounts and whose shares are quoted on the Stock Exchange have the obligation to adopt IAS / IFRS norms into the valuation and presentation of their statutory accounts as of 1 January 2005.

The other consolidating companies have the choice between the Belgian GAAP and the IAS / IFRS norms for the consolidated accounts.

However, in the medium term this obligation will be extended even to the statutory accounts.

## 8. UHY firms in Belgium

### CDP Partners

Rue de l'Hospice Communal, 6  
B-1170 Brussels  
Belgium



Tel: +32 2 663 11 20  
Email: [info@cdp-partners.be](mailto:info@cdp-partners.be)  
Website: [www.cdp-partners.be](http://www.cdp-partners.be)

CDP CB&Co s.c.p.r.l.  
Réviseurs d'entreprises - Bedrijfsrevisoren

With an additional office in Brussels.

CDP Partners is a local network combining several companies, members of the Belgian Chartered Auditors Institute (Institut des Réviseurs d'Entreprises) or of the Belgian Chartered Accountants Institute (Institut des Experts-Comptables).

### Handson & Partners

Prins Boudewijnlaan 12b  
B-2550 Kontich  
Belgium



Tel: +32 (0)3 287 83 90  
Email: [info@handsonpartners.be](mailto:info@handsonpartners.be)  
Website: [www.handsonpartners.be](http://www.handsonpartners.be)

With additional offices in Brussels, Ghent and Hasselt

## 9. UHY offices worldwide

For contact details of UHY offices worldwide, or for details on how to contact the UHY executive office, please visit [www.uhy.com](http://www.uhy.com)