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Doing business in Wallonia - Belgium - A PRACTICAL GUIDE Update 2016

This guide has been prepared in collaboration between the Awex, Law Square and PwC

lawsquare



PREFACE

Wallonia, land of opportunities

Wallonia is a warm, friendly and high-performing region, rich in history and resolutely focussed on the future, and it welcomes you with open arms...

Situated in the heart of Europe and of a market of 500 million consumers, Wallonia is a region where the businesses can establish themselves and develop in highly favourable conditions.

It's an area of great innovation and competitiveness where men and women can promote their talents, use their expertise and blossom in their work.

It's an attractive and competitive region where businesses benefit from intelligent taxation and a wide range of financial, social and environmental support.

It's a warm region, where hospitality, culture and tradition come together harmoniously.

The Foreign Investment division of the Wallonia Export-Investment Agency is the governmental organization taking care of Foreign Investors

We assure you of our total commitment to help your company in its enquiries and steps to set up or develop in Belgium - Wallonia. We may help on different aspects including the search of real estate, information on the cash grants available in the Region, availability and costs of personnel, etc.

You will receive a day-to-day support from our organization as well as from the Regional government and the local development agencies. We ensure an effective follow-up service to consolidate your operations and support further expansion.

We can organize visits locally and have you meet key partners.

All of our services are free of charge and treated confidentially.

Should you have any question or need specific information, please do not hesitate to contact us.



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PwC Belgium and Law Square are pleased to offer their assistance in presenting this Investment Guide.

This Guide aims at describing the most relevant topics for an investor from a legal and from a tax perspective. Next to the main direct (corporate tax) and indirect tax (VAT, customs etc...) aspects, this guide covers the most essential aspects of corporate, commercial, social and IP laws.

Setting up a company, a subsidiary or a branch, under the most appropriate legal form and anticipating the tax consequences, with possible tax rulings, offers a foreign investor legal certainty and security.

Financial transparency and reliability is one of the characteristic of the Belgian accounting and auditing framework. It is based on the internationally recognized standards on accounting, auditing and sustainability reporting. Over 350,000 financial statements of Belgian companies are permanently available on-line through the website of the National Bank of Belgium, allowing an investor to be informed of the financial situation of its commercial partners (creditors; suppliers; customers and other contracting parties).

A clear and codified economic and commercial legal framework provides you with accessible and reliable rules applicable to the market in which an investor operates (intellectual property; competition rules; consumer protection rules; etc.).

Each chapter can be read separately so as to be used as a real legal guide for the investor whatever the issues he or she deals with.

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and PwC and Law Square and their respective partners, directors employees and, for Law Square, their attorneys, do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

Each section has been updated and coordinated in 2016 by a team composed with tax and legal experts with experience in the relevant field.

Sincerely yours,



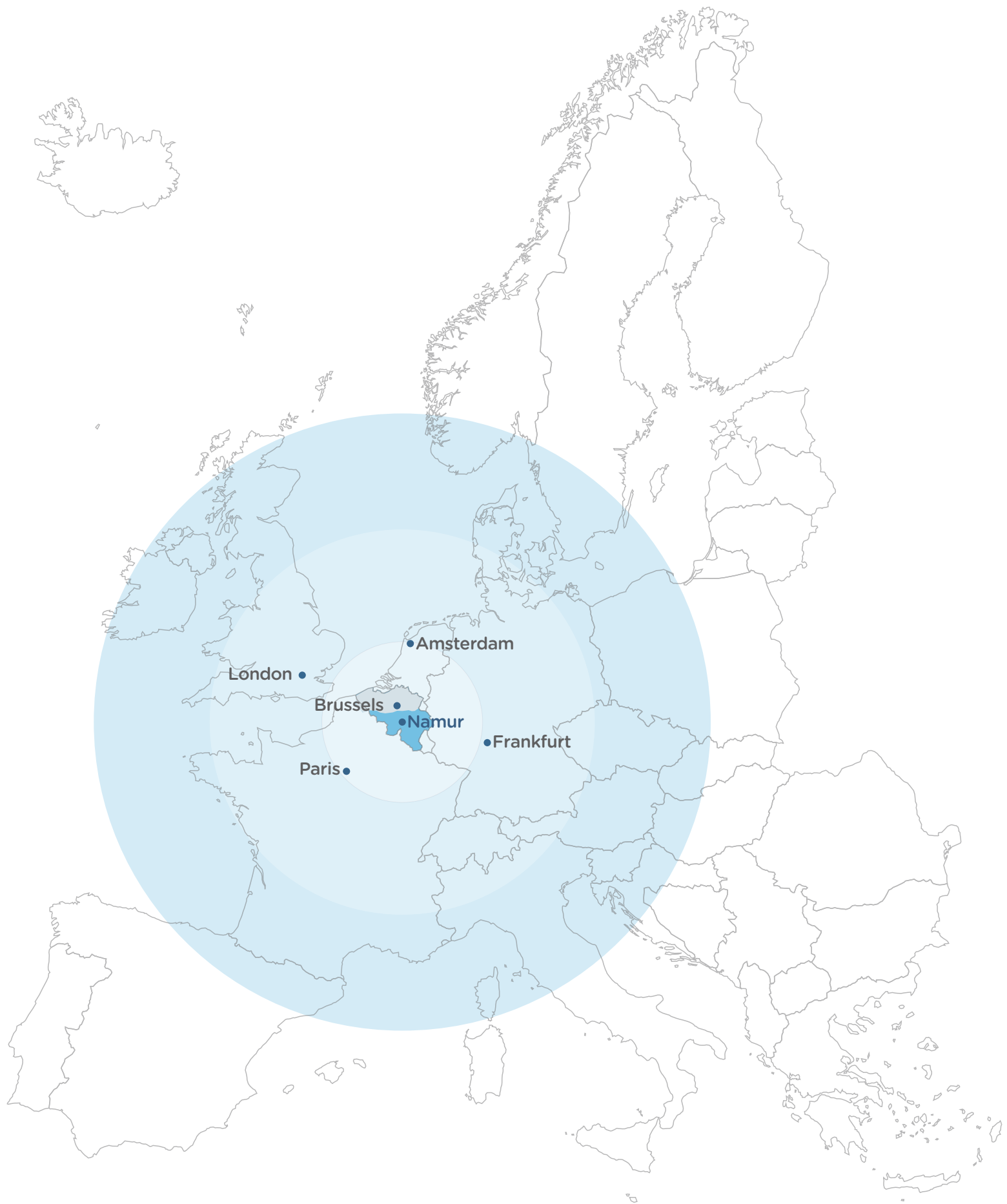
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I. STARTING A BUSINESS

1.1 Choice of entity - Forms of business enterprise

1.1.1 Subsidiary versus branch

For foreign investors, the most common forms for doing business in Belgium are either as:

(i) A subsidiary ('filiale') incorporated in the form of a Belgian company with separate legal personality distinct from its parent company; or

(ii) A branch ('succursale'), i.e. a centre of activities of a foreign company in Belgium, where it regularly carries out activities in Belgium which fall within its commercial purpose and that is represented by a representative authorised to bind the branch with respect to third parties (a legal representative).

The main characteristics of both subsidiaries and branches are set out in the table below:

Subsidiary	Branch
Separate legal entity - a legal entity distinct from its parent company.	No separate legal entity - although it may constitute a separate economic entity, it is merely an extension of the head office.
<ul style="list-style-type: none"> Incorporation by notary deed Filing of articles of association with the Clerk's Office of the Commercial Court followed by a publication of an excerpt thereof in the Annexes to the Belgian Official Gazette. Registration with the Belgian Crossroad Bank for Enterprises. 	<ul style="list-style-type: none"> Incorporation by filing certain documents/information regarding the head office with the Clerk's Office of the Commercial Court and the publication of excerpts thereof in the Annexes to the Belgian Official Gazette. Registration with the Belgian Crossroad Bank for Enterprises
Fees: <ul style="list-style-type: none"> notary fees; registration duties (EUR 50); fees for filing and publication of the notary deed; and registration with the Belgian Crossroad Bank for Enterprises. 	Fees: <ul style="list-style-type: none"> translation, notary and authentication fees; filing and publication fees; and registration with the Belgian Crossroads Bank for Enterprises
A subsidiary may be fully foreign owned: no residency or nationality requirements for its shareholders.	N/A
Shareholders' liability limited by their contribution: shareholders are in principle not liable for any liabilities of the company above the amount of their contribution.	The non-resident company bears unlimited liability for all activities, debts, agreements etc., which are performed or concluded by or through its Belgian branch.
Management by a board of directors (SA) or one or more manager(s) (or management council) (SPRL). No residency or nationality requirements for directors.	Management by a legal representative with respect to whom there are no nationality or residency requirements.
Capital requirements (cf. below).	No capital requirements: a branch may operate through its current account with the head office (cf. below).
Accounting requirements: system must conform to the Belgian minimum standard chart of accounts + annual accounts.	Accounting requirements: system must conform to the Belgian minimum standard chart of accounts + filing of annual accounts of the head office.
A subsidiary has to appoint a statutory auditor, member of the "Institut des Réviseurs d'Entreprises", if it exceeds more than one of the following three thresholds at balance sheet date of the last financial year for two consecutive financial years: <ul style="list-style-type: none"> annual turnover: EUR 9,000,000 (excl. VAT) balance sheet total: EUR 4,500,000 (excl. VAT) average number of employees: 50 The aforementioned thresholds are to be calculated on a consolidated basis in case the subsidiary is part of a group that must file consolidated annual accounts.	A branch office does not have to appoint an auditor unless its average number of employees is of at least 50 (meaning it has to set up a works council). In this respect only the employees of the branch are to be taken into account.

¹ Pursuant to Article 15 BCC for the financial years starting as from 1 January 2016

Subsidiary	Branch
Language requirements: the location of the registered office/exploitation seat determines the language in which official documents emanating from the subsidiary will have to be drawn up; i.e. in the Wallonia region in the French language. In respect to all communications with the authorities and employees, the use of the French language will be mandatory.	Language requirements: idem. Official documents emanating from the head office, relating to the branch office can still be drawn up in the official language of the head office. However, if such documents are to be filed and/or published in the Annexes to the Belgian Official Gazette the documents will have to be translated in the branch office's official language by a Belgian sworn translator before filing and/ or publication.

1.1.2 Subsidiary («filiale») of a foreign company

The principal types of Belgian companies most often selected for this purpose are the limited liability company (SPRL) and the corporation (SA), the formation of which is not subject to any prior go-

vernmental authorization. The co-operative company with limited liability (SCRL) and the limited company with shares (SCA) are less usual.

The main characteristics of the SA and SPRL are set out below²:

S.A.	S.P.R.L
Minimum capital: EUR 61,500 (fully subscribed and paid upon incorporation).	Minimum capital: EUR 18,550, of which at least EUR 6,200 (or EUR 12,400 when incorporated by one person) must be paid upon incorporation.
Registered shares, with or without par value – or dematerialized securities represented by a registration in an account in the name of the owner. The account should be opened with an approved accountkeeper. Freely transferable.	Registered shares in order to preserve the closely held character of the SPRL – not freely transferable, prior approval required.
Incorporation by at least two founding shareholders – either Belgian or foreign individuals or companies (the latter to be represented by a legal representative).	Incorporation by one or more founding shareholders (if the only shareholder is a legal entity, the latter will be held personally liable for the company's debts for as long as it remains the sole shareholder)
Shareholders' potential liability limited by their contribution	Shareholders' potential liability limited by their contribution
Board of directors of at least 3 directors (or at least two directors if the company has only 2 shareholders). The directors are not necessarily Belgian citizens or residents.	Management by one or more managers, who, individually, have full management authority, or who can form a Management council. The managers are not necessarily Belgian citizens or residents.
Representation of the company by the board as a college; or by one or more directors acting jointly or individually in accordance with the terms set out in the articles of association. The company can also grant special proxies for the performance of specific assignments.	The company is represented towards third parties by the individual general manager(s). However the articles of association of the company can stipulate that several general managers must act jointly to exercise this general power of representation. Moreover, the general managers themselves may issue a special proxy for the performance of specific assignments.
Daily management of the company can be entrusted with one or more persons, whether or not directors, acting jointly or individually.	The law does not explicitly provide for an organ for the daily management of the company. However, special proxies for specified daily management duties can be granted.
Statutory auditor if not a small or medium-sized company (cf. above)	Statutory auditor if not a small or medium-sized company (cf. above)
The shares are eligible for quotation on a stock exchange.	The law prohibits raising funds through public subscription.

²The potential reform of company code will lead to reduce the amount of legal forms of company to four, being the SA, the SPRL, the co-operative company with limited liability (SCRL) and legal partnership.

1.1.3 Branch (“succursale”) of a foreign company

The formalities for the formation of a Belgian branch are two-fold: formalities to be met by the parent company and formalities to be met in Belgium.

In this respect, the Belgian law differs between Belgian branches of foreign companies incorporated under the laws of another EU member state and Belgian branches of non-EU member state companies. For the latter the formalities to be met are more stringent.

For instance, the board resolution stating the decision of the head office to establish a branch and operating its activities as well as the articles of incorporation and association must be filed with the Clerk’s office of the local commercial court. All documents to be filed must be legalized by the competent authority . Such legalization can be done in accordance with the Hague Convention (by affixing an apostil). Finally, all documents have to be accompanied by a certified translation from a Belgian licensed translator.

A summary of details concerning the foreign company and its Belgian branch must be submitted for publication in the Belgian Official Gazette.

Finally, the branch must be registered with the Crossroad Bank for Enterprises. Once the branch has been established, it must, on an ongoing basis, (i) file with the Clerk of the local Commercial Court and with the Crossroad Bank for Enterprises notice of any amendments to its Articles of Association, By-laws or branch managerial appointments and (ii) file with the Belgian National Bank on an annual basis its financial statements (i.e., the head office financial statements, including consolidated financial statements if applicable). This information is available to the public. Although the branch is not required to file separate branch financial statements, it does have to keep separate local financial statements and file an annual Belgian corporate income tax return.

1.1.4 Conclusion

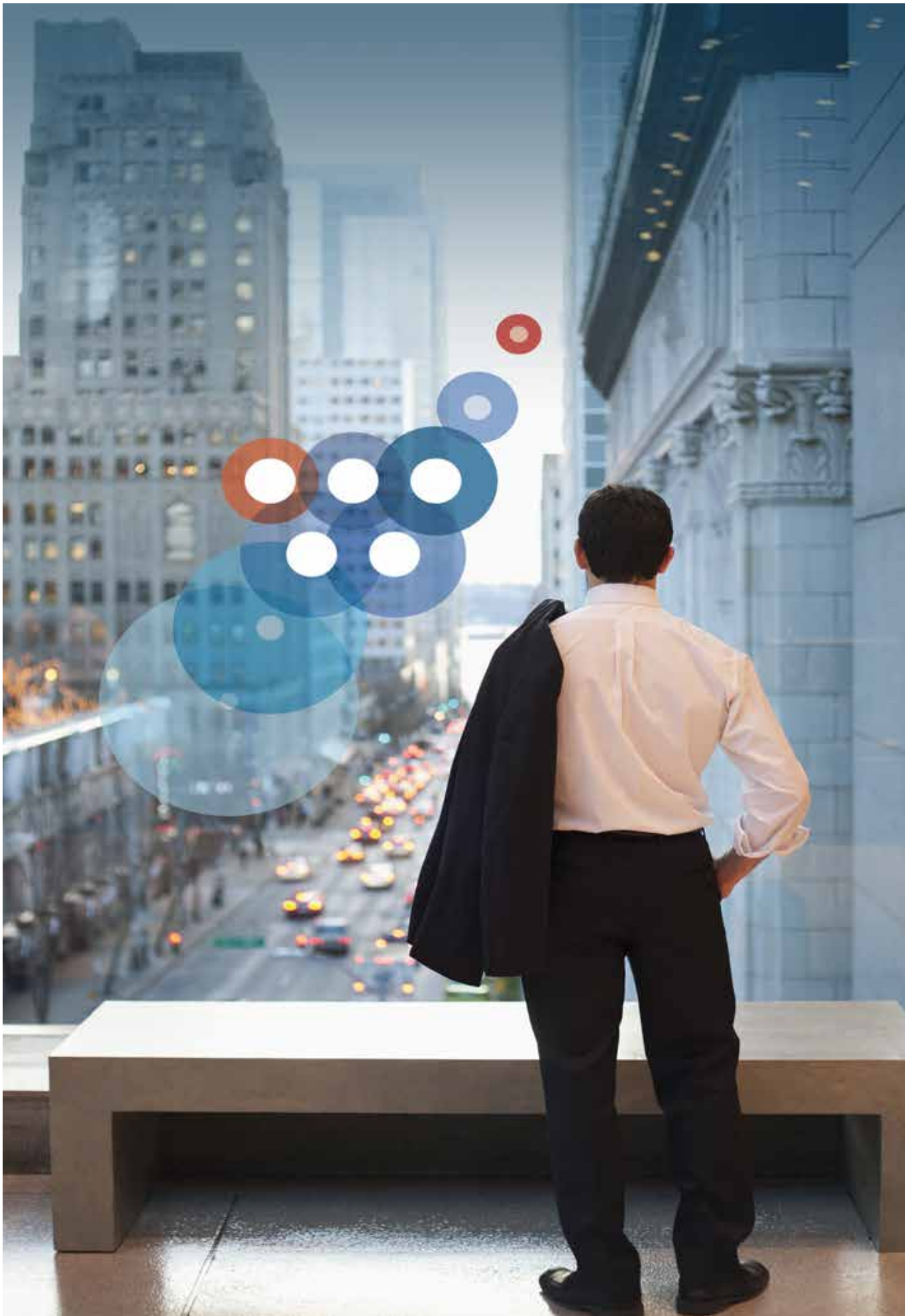
In principle it is much more convenient to incorporate a Belgian subsidiary rather than a branch.

The main advantages of the incorporation of a subsidiary:

- i. The subsidiary is a means to limit potential liability;
- ii. It is a separate legal entity;
- iii. The subsidiary may offer tax advantages.

These tax advantages are notably the ability to repatriate or distribute net profits with little or no dividend withholding tax, the benefit of the double tax treaties concluded by Belgium and the opportunity to qualify for the EU Parent-Subsidiary Directive.

The main reason to opt for a Belgian branch is the absence of dividend withholding tax on branch profits.



1.2. Real Estate

When you, as a physical person, or your company wish to set up a business in Belgium or when your company opens a branch in Belgium, you will most likely come in touch with the Belgian legislation regarding lease or purchase of office space and/or commercial or industrial buildings.

Under Belgian law "real estate" is defined as assets immovable by nature, meaning the ground and every building or construction incorporated therein.

1.2.1 The acquisition of real estate

- **A first option is the straight acquisition of real estate.**

The purchase of an existing building is typically subject to a written sales contract in which the conditions of the sale are set out. In general, such contract should at least contain the purchase price, the payment procedure, the title's transfer date and a sufficiently detailed description of the building.

The purchase deed must be signed before a Belgian notary public who normally takes care of:

- The relevant searches with the regional offices of the Ministry of Finance responsible for the land registry;
- The applicable zoning and planning requirements; and
- Registration of the notary deed.

The base percentage of registration taxes in Wallonia amounts to 12.5 percent of the market value of the real property.

1.2.2 Lease agreements

Another option is the lease of office space and/or commercial or industrial buildings.

- **Common lease agreements**

A lease agreement is an agreement by which one party agrees to give the other party the use and enjoyment of a real property during a certain period and in exchange for a certain fee (rent), which the latter agrees to pay.

Under Belgian law a lease agreement may be entered into both orally and in writing, for a certain

fixed term or for an indefinite term. However, in case the fixed duration of the agreement exceeds 9 years, parties are not only obliged to draft a written agreement, also a notary deed must be drawn up. This deed has to be transcribed in full at the local mortgage registry in order to be enforceable to third parties.

Written lease agreements are usually drawn up in 3 original copies and must be registered within 4 months of their execution. One original must be filed with the registration office. A registration tax of 0.2 percent will be due. When the lease is for an indefinite term, the tax is calculated on the basis of the total amount of rent payable under the lease contract plus estimated charges. Lease contracts of an indefinite term will be considered, for the purpose of calculation of the registration taxes, as a 10-year contract. Registration is not only a legal obligation but also protects the tenant vis-à-vis the landlord and third parties in case of the subsequent sale of the leased premises.

- **Commercial lease agreements**

Commercial lease agreements are governed by the Law of 30 April 1951 on Commercial Lease Agreements covering the lease of real property that, by means of an explicit agreement or during the course of an existing lease agreement, is affected primarily for the exercise of a retail business or a craftsman's profession in direct contact with the public.

The legal duration of a commercial lease agreement is fixed at (a minimum of) nine years and may be prolonged for three consecutive periods of nine years (i.e. a maximum of thirty-six years).

In principle, it is not required to have a written agreement. Although when there is a written agreement, one original copy thereof must be filed with registration officer, and registration taxes of 0.2 percent will be due (cf. common lease agreements).



1.3 Environmental issues

As environmental policy has gradually been transferred to the regional level, enterprises willing to actively invest in the Wallonia region will have to comply with the provisions of the Wallonia Decree on Environmental Permits dd. 11 March 1999.

Before said Decree could enter into force, four executive decisions were needed regarding (i) the list of projects subject to an impact assessment and the list of classified installations and activities, (ii) the procedure for granting environmental permits, (iii) environmental impact assessments, and (iv) general exploitation conditions.

Installations and activities are divided into 3 classes depending on their (decreasing) impact on the environment (Class I stands for very large facilities and/or risky activities, Class II covers the majority of (normal) businesses, and Class III is reserved for (very) small facilities without any risky activities).

As a general rule, an environmental permit is compulsory for all installations and facilities classified I and II prior to the commencement or change of any activities and/ or the use or transformation of

any facilities. A list of the classified activities can be found on the website of the Wallonia Union of Enterprises. Class III facilities will only be required to lodge a declaration with the municipal authorities.

The Wallonia Decree has opted for a single and simplified procedure and has replaced the former exploitation and building permits by a single environmental permit. This global permit is deemed to cover (nearly) all potential environmental nuisances.

The procedure can be summarised as follows:

- An environmental impact assessment must be performed for all Class I activities and facilities and to a certain extent for Class II activities and facilities as well, before applying for an environmental permit (please note that this can last up to one year for some Class I permits);
- A public consultation must be organised prior to the environmental impact assessment;
- The application must be made on the forms issued by the authorities and must be accompanied by a cadastral extract and a plan drawn to scale (1/10.000);
- The authorities will organise a public inquiry;
- A 'technical officer' will be charged by the authorities to draw up a report and submit a draft decision;

- The applicant can at all times inquire about the status of his application;
- The environmental permit for Class II activities or facilities will in principle be issued after 70 to 100 days; while 130 to 170 days will be allowed for delivering same permit for Class I activities or facilities (the above delays are only valid insofar the application is considered by the authorities as 'complete');
- Opportunities to appeal against a negative decision exist.

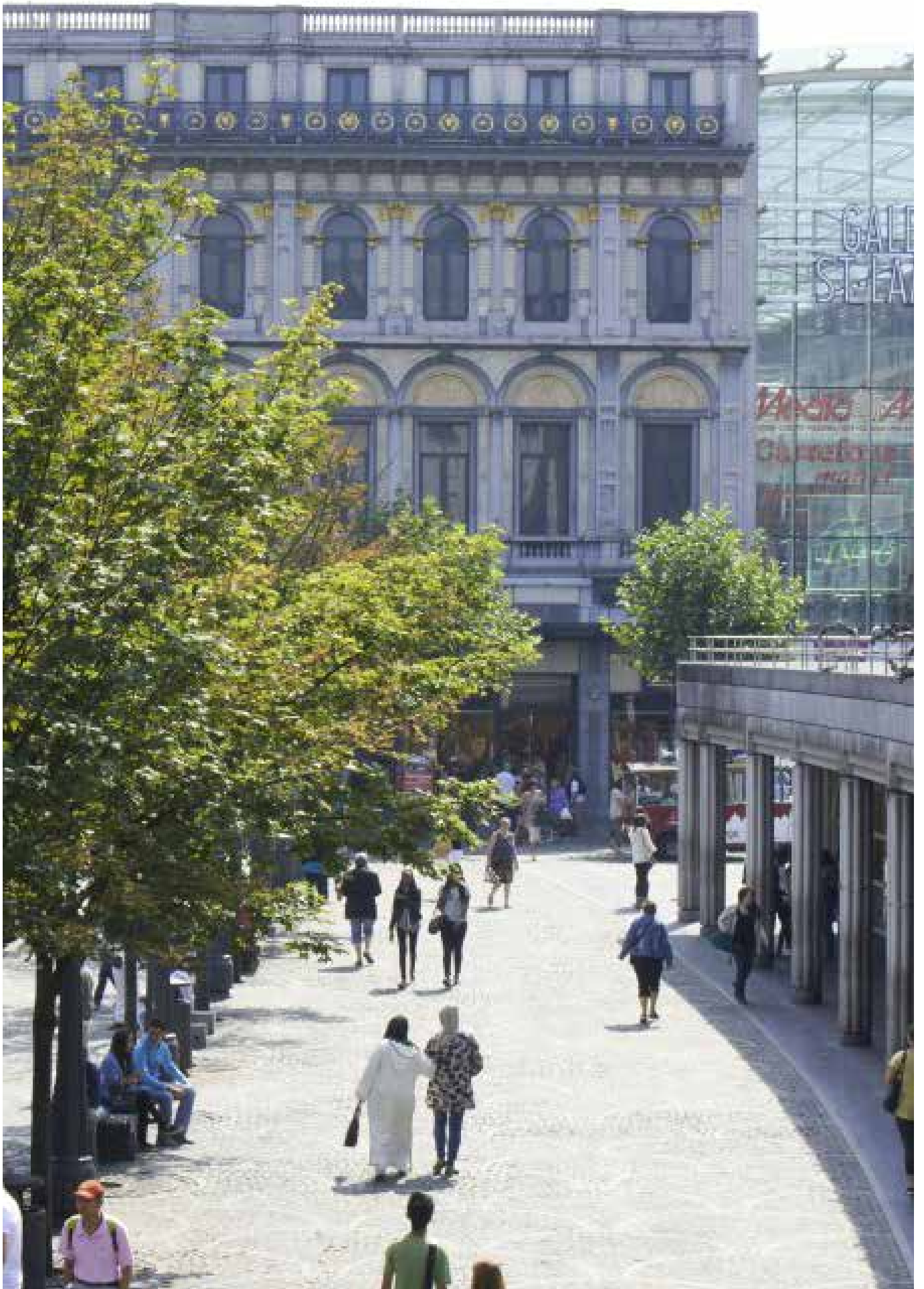
Once the permit is delivered, the construction of the facilities or the launch of the activities must take place within 2 years. The permit itself is in principle valid for 20 years. Besides the costs linked to the environmental impact assessment, an administrative fee of EUR 125 is due for the delivery of a Class II permit, while a Class I permit will cost EUR 500. A Class III declaration is free of charge.

Said environmental permit or declaration is attached to a geographical unit where specific facilities exist (will be set up) and/or specific activities are (will be) performed.

As long as the activities do not change, the permit remains valid even in case of change of ownership. In this latter case, both the transferor and the transferee must inform the authorities of the transfer and the transferee must declare that he will adhere to the conditions laid down in the permit. Such declaration must also be included in the notaries deed to be executed if land or buildings are transferred. Failing to inform the authorities leads to a joint liability of both the transferor and the transferee for any damages resulting from the non-compliance with the conditions of the permit.

It should be noted that various types of sanctions exist (administrative, criminal, civil) and that enforcement of the environmental rules tend to become stricter.

Section IV of the abovementioned Wallonia Decree on the soil remediation is worth to mention as it will impose remediation duties in case of (historical) soil pollution and/or polluting activities (as referred to in the Wallonia Decree of 11 March 1999). Duties (ranging from a descriptive soil investigation to the cleaning up) will of course be adapted to each specific situation and will most probably impact the transfer of land in the Wallonia Region.



II. ACCOUNTING, REPORTING AND AUDIT REQUIREMENTS

2.1 Who is subject to accounting regulations?

Almost all Belgian legal entities and Belgian branches of foreign subsidiaries have to comply with accounting regulations. Further details on the scope are available in the following section.

2.2 What are the applicable rules?

2.2.1 Belgian Regulatory Framework

The most important text constituting the Belgian accounting legislation is Article III.82 (book n° 3) et seq. of the Code of Economic Law and the royal decree implementing the company code.

Furthermore, there is a Belgian Accounting Standards Commission whose function is to develop accounting doctrine and to formulate the principles of proper accounting by way of opinions or recommendations. The latter do not constitute legal texts but are generally accepted by all interested parties (including the tax authorities) as providing guidelines to acceptable accounting practice in Belgium.

2.2.2 Accounting requirements

Article III.82 et seq. of the Code of Economic Law and the royal decree are applicable to almost all Belgian legal entities and Belgian branches of foreign subsidiaries. Supplementary accounting requirements are in place for financial institutions, insurance companies, pension funds and hospitals.

The underlying accounting records must be prepared in the official language applicable to the company (French in the Walloon Region). In addition,



accounting records should be kept in euros.

Belgian regulations require accounting records to be organised as follows:

1. Auxiliary books for VAT purposes

The basic journals to be maintained include the following:

- a sales journal listing all sales invoices and documents;
- a purchase journal listing all purchase invoices and documents;
- a cash receipts book in case the VAT payer benefits from the exemption to issue sales invoices.

2. Other auxiliary books

In addition to the minimum set of journals required, it is common practice to complement the above journals with a number of additional journals (specific day-books), which would normally be structured as follows:

- a financial journal listing the information of the bank statements in sequential order
- a miscellaneous journal summarising the miscellaneous journal entries in sequential order
- a centralisation journal centralising the accounting records on a monthly basis
- the inventory book: at least once a year, each enterprise must proceed in good faith and with due prudence to an inspection, verification review and evaluation of its operations to establish a complete inventory of its assets and rights of any kind, of its debts and commitments of any kind relating to its activity and of its own resources. This inventory shall be prepared following the layout of the company's chart of accounts.

3. Chart of accounts

The Belgian chart of accounts must conform to the content, presentation and numbering system of the minimum standard chart of accounts as laid down by the Royal Decree of 12 September 1983.

The nomenclature of the accounts provided in the minimum standard chart of accounts may however be adapted to the particular nature of the activity, the assets and liabilities, the income and charges of the company. Those accounts included in the minimum standard chart of accounts, which are not applicable

to the company, do not need to be included in its chart of accounts. The chart must always be kept available for those concerned at the company's registered office and at any other major administrative office. Small companies may use an abridged format for their annual accounts.

4. Annual accounts

After the ledger accounts have been reconciled with the results of the inventory, they must be summarised in a descriptive form thereby constituting the annual accounts.

The Belgian annual accounts need to be presented in accordance with a standard format described by the National Bank of Belgium. This format includes a balance sheet, income statement and notes to the statutory accounts. No cash flow statement is required in Belgium. The statutory accounts need to be filed at the Belgian National Bank within one month after approval of the statutory accounts by the shareholders. The approval has to take place at the latest within six months following the year-end closing so that the filing of the accounts must be made in any case within the seven months following the date of the closing.

The filing entails the annual accounts, together with the director's report and the auditor's opinion (in case of appointment of an auditor).

5. Consolidated accounts

Belgian legislation states that a company is required to issue and publish consolidated financial statements if they control other entities.

In general, when the parent owns (directly or indirectly) more than one half of the voting power of the company, control is assumed to exist. An exemption from preparing the consolidated accounts is granted for 'reduced size groups' whereas the latter is determined as not exceeding one of the following 3 criteria:

- average personnel number = 250
- annual consolidated turnover = EUR 34 million
- consolidated balance sheet total = EUR 17 million.

The statutory auditor needs to certify the consolidated accounts as well.

The consolidated accounts prepared in accordance with these obligations need to be prepared in accordance with the IAS/IFRS.

The obligation to publish consolidated accounts can be waived if the company is a member of a foreign group that publishes consolidated accounts and that such accounts are translated into French and published in Belgium.

6. Back-up requirements

According to Article III.88 of the Code of Economic Law, the accounting books must be kept by the undertakings during 7 years as of 1st January of the year following their closing.

2.2.3 Accounting principles

• Basic Belgian accounting principles

Fair presentation

The concept of true and fair view, which is the most fundamental accounting principle, is similar to IAS/IFRS. However, whereas IAS/IFRS tends to achieve a fair value presentation of all assets and liabilities, Belgian GAAP is often more prudent, since the historical cost principle is the basis for a true and fair presentation (e.g. revaluation of tangible fixed assets is only allowed for Belgian GAAP under very strict conditions).

Going concern

Belgian annual accounts are presented under a going-concern basis. Belgian accounting legislation requires specific disclosures in the directors' report when the going concern is in danger. This is triggered when certain parameters are met.

Consistency of presentation

When changes in the presentation are made to enable the financial statements to be fairly presented, Belgian rules require that such changes should be disclosed and explained in the notes, but comparative information does not need to be reclassified.

Accrual basis of accounting

Consistent with IAS/IFRS, an enterprise should prepare its financial statements under the accrual basis of accounting.

Offsetting

Belgian legislation requires that a receivable and a debt towards the same counterparty be offset provided both are due and this in contradiction to IAS/IFRS.

• Major differences between Belgian GAAP and IAS/IFRS

- **Pension accounting:** Belgian GAAP does not require to account up to the level of the Accumulated Benefit Obligation, but takes only the premium paid during the year into the income statement
- **R&D:** for Belgian GAAP both Research & Development can be capitalised under certain conditions, whereas under IAS/IFRS Research is always to be charged to the income statement
- **Provisions:** no strict rules are determined under Belgian GAAP (and consequently provisions can be tax-driven), whereas very restrictive rules exist under IAS/IFRS
- **Leasing:** Belgian GAAP only requires that the lease payments fully cover the lump-sum of the initial investment, whereas under IAS/IFRS the party that bears the risks and rewards needs to present the assets on the balance sheet
- **Inventory valuation:** For Belgian GAAP both the full costing and the direct costing method are allowed, whereas the last method is not accepted under IAS/IFRS
- **Deferred taxes:** are only presented in Belgian consolidated accounts, not in the entity accounts

Furthermore, Belgian companies generally apply accounting policies in the entity accounts that are more conservative than what one could expect under IAS/IFRS rules.

This often results in accelerated depreciation, early provisions for restructuring, inventories valued at direct cost (no overhead allocation), and provisions for major repair and maintenance that are not allowed under IAS/IFRS. The reason for this is the fact that the entity accounts are the basis for the tax return. Depreciations and provisions not accounted for in the entity accounts cannot be claimed for tax purposes.

It should be noted that IAS/IFRS is not accepted for the filing of the statutory accounts with the National Bank of Belgium. Therefore, for companies applying IAS/IFRS or other foreign accounting principles, a second set of statutory accounts should be maintained.

2.3 Reporting

Large companies must file their management report at the same time as their annual accounts.

The Belgian Company Code already requires that large companies disclose main risks and uncertainties and, where appropriate, key performance indicators on environmental and social issues in their annual report.

Following the transposition of the directive 2014/95 as regards disclosure of non-financial information, corporate reporting requirements will also include more non-financial information (i.e. environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters) for certain large companies.

2.4 Audit requirements

2.4.1 Legal requirements

The Belgian Company Law stipulates that all 'large' entities organised in a legal structure with limited director's responsibility are obliged to appoint an auditor.

The company law defines a 'large' company as a company that exceeds for two consecutive financial years more than one of the following 3 criteria at balance sheet date of the last financial year³ :

- average personnel number = 50
- annual turnover = EUR 9.000.000
- balance sheet total = EUR 4.500.000

If the entity is part of a group that, on a consolidated basis, exceeds more than one of the above 3 criteria, it is mandatory to appoint a statutory auditor as well.

The appointment of the statutory auditor is to be approved by the shareholders for a period of 3 years. Only in very rare and well-determined circumstances, the auditor can resign or can be dismissed by the company during this three-year period.

2.4.2 Auditing standards

The Belgian audit profession is regulated by the 'Instituut der Bedrijfsrevisoren/Institut des Révi-

seurs d'Entreprises' (IBR/IRE) under independent public oversight. The IRE issued a number of auditing standards to be applied and which are compliant with the International Standards on Auditing. On a regular basis, quality reviews are performed to ensure the high quality of an audit in accordance with those standards.

2.4.3 Independence

Act of 22 July 1953 setting up the Institute of registered auditors and setting up the public oversight over the auditor's profession and Article 133 of the Belgian Companies Code stipulate the following in respect of the auditor's independence:

1. Prohibited services

A number of prohibited services are determined. These are:

- management functions in general
- bookkeeping/preparation of financial statements
- design, development and implementation of financial information technology systems
- valuation of items included in financial statements
- internal audit
- representation in resolution of litigations
- recruitment of managers

Those services are prohibited when rendered not only to the audited company, but also to foreign and Belgian subsidiaries of the Belgian entity.

2. Fee cap

The Companies Code contains a one-to-one fee cap for the permitted non-audit services. This fee-cap is valid for listed companies in the EU and for companies that are required to publish consolidated financial statements. The fee-cap includes that for permitted services the non-audit fees cannot exceed the audit fee, unless there is prior approval from the statutory audit committee or if there is a joint audit with another auditor.

3. A cooling-off period

A cooling-off period is determined for the statutory auditor who may not accept any office as Director or employee in a company he has audited until after a period of two years after the end of his involvement with the audit of the company.

³ Pursuant to Article 15 BCC as from 1 January 2016



4. Disclosure

The annual audit fees and non-audit fees need to be disclosed in the notes to the statutory financial statements. Disclosure is also required for the fees on a consolidated basis and for the fees invoiced to Belgian related entities.

Regulation No 537/2014 on specific requirements regarding the statutory audit of public-interest entities (listed companies on a regulated market, credit institutions and insurance companies) will become applicable by 17 June 2016⁴ . Amongst others, it defines a new fees cap on non audit services, a maximum duration on statutory audit and a list of prohibited non-audit services.

⁴ Directive 2014/56/EU is also a new European act relevant in this field.

III. BUSINESS INCENTIVES

The Belgian economy is an open economy and pursues a policy of welcoming foreign investments. To this end, Belgium and Wallonia provide incentives in order to create an optimal business climate for foreign investors: financial incentives, employment incentives and tax-related incentives.

3.1 Financial incentives

- **What kinds of companies qualify for these financial incentives?**

Financial incentives are available both for large companies that have their place of business in a Development Zone in the Wallonia Region and that decide to locate their investment projects in this Zone and for small and medium-sized companies having their place of business in the Wallonia Region and investing in that Region.

The Development Zones are those as defined by the European Union. In the Wallonia Region, cities and municipalities qualifying as Development Zones are numerous.

The amount granted is calculated following the type of company :

Criteria	Very Small Enterprises	Small Enterprises	Medium Enterprises	Large Enterprises
Employment	Less than 10 workers	From 10 to less than 50 workers	from 50 to less than 250 workers	Enterprise which does not encounter the SME's Criteria
Balance sheet total and / or Turnover	2 Mio. €	10 Mio. €	43 Mio. € 50 Mio. €	

- **What kinds of financial incentives are available?**

- a. *For large companies*

In general, financial incentives available for large companies consist of cash grants calculated as a percentage of eligible investments in tangible and intangible fixed assets.

In addition to these cash grants, the Wallonia Government may also grant a public guarantee for the repayment of capital and interest with respect to loans concluded to finance eligible investments or with respect to convertible bonds issued by large companies and subscribed by specific bondholders.

- b. *For small and medium-sized companies*

The financial incentives available to small and medium-sized companies can be divided into two main categories: the cash grants related to investments and the other cash grants.

The cash grants related to investments are available for certain kinds of investment in tangible and intangible fixed assets. They are calculated as a percentage of qualifying investments. In principle, the cash grant percentage amounts to maximum 25%.

The level of cash grants allocated may however vary slightly according to geographical criteria. In principle, cash grants are higher in cases where the small and medium-sized company invests in a Development Zone.

In addition to these investment incentives, other cash grants are available for small and medium-sized companies which decide, for instance, to install a quality system or to be assisted by consultants for specific matters.

The Wallonia SME finance and guarantee company (SOWALFIN), incorporated in 2002, also provides capital to the Wallonia small and medium-sized enterprises. The purpose of the SOWALFIN is to invest in the equity of unlisted companies (private equity).

SOWALFIN is coordinating the action of nine "Invest" companies that act as a support for either creating and expanding SMEs or creating stable employment in an assigned area. They can for example purchase shares of small and medium-sized enterprises, or subscribe to a bond issue, or grant subordinated or convertible loans.

3.2. Employment incentives

3.2.1. Federal level

The amount of social security charges is quite high in Belgium due to the high level of social security protection. Fortunately, various measures in favour of employment limit the social security contributions or exempt the employer from their payment.

A general measure reduces the social security charges payable by employers. The reduction in the social security costs for employers amounts to a minimum of EUR 1.848 annually per full-time employee. It is applicable to all employees in the private sector. Additional reduction is applicable for employees with low remuneration (less than EUR 5.560,49 per quarter) and for employees with high remuneration (more than EUR 13.401,07 per quarter).

A reduction of the employer's social security charges that have to be paid for the first six employees can be granted to the companies as follows:

1 st employee:	almost total exemption for an unlimited period
2 nd employee:	€ 1.550 during 5 quarters € 1.050 during 4 quarters € 450 during 4 quarters
3 rd employee:	€ 1.050 during 5 quarters € 450 during 8 quarters
4 th employee:	€ 1.050 during 5 quarters € 450 during 4 quarters
5 th and 6 th employee:	€ 1.000 during 5 quarters € 400 during 4 quarters

Another measure is linked to the engagement of particular categories of employees such as older and younger employees, employees who were previously dismissed during a collective dismissal, and long-time unemployed workers.

For example, in case of engagement of a young worker (qualified for employment under 'CPE', "starter", determined by the Federal Employment Agency), the company could be entitled to a reduction of social security charges which amounts to EUR 1.000 during 4 quarters. Then the reduction amounts to EUR 400 until the employee is 26 years old or until the end of the CPE agreement.

Other social security charges reductions are linked to the reduction of the working time in the company.

3.2.2. Employment incentives in Wallonia

Different kinds of incentives are available, in certain cases in addition to federal schemes. You can find all the details relating to such incentives on the FOREM (the Wallonia public service for employment and training) website. Some of them will be outlined hereunder.

- **The Training Integration plan (PFI)**

This plan grants incentives to companies that engage unemployed people and accept to give them professional training during a fixed period of time (from 4 to 26 weeks, determined by the authorities). After this training period, the employee will sign an indefinite duration employment agreement for a minimum length equivalent to the length of the training period.

The employer will only pay the trainee, during the professional training, an amount equal to a percentage of the difference between the salary that he would normally have to pay and the amount of unemployment benefits that the employee receives.

After the training period, the company could possibly benefit from the social security charges reduction plan (federal level).

- **Promotion of employment (SESAM)**

Incentives are granted to companies which have less than 50 workers and which hire an unemployed person. Employers can benefit, during a maximum of 3 years from a subvention of EUR 10.000 for the first year, EUR 7.500 for the second year and EUR 5.000 for the third year. This amount can further be increased by EUR 2.500 in certain circumstances (e.g. the worker hired is younger than 30 years old; 50 years old or older, etc.).

- **Work premium**

If an employer with less than 10 employees creates work in the Wallonia area, he can benefit from a premium of EUR 5.000 for the first hiring and EUR 3.250 for the following hirings (limited to 9).

- **E-business premium**

Incentives exist for employers that wish to create

e-business and in this respect wish to hire employees as “gestionnaires de projets e-business agréés” (RENTIC). The employer can benefit from a premium of 80% of the gross remuneration (up to EUR 5.000) of such RENTIC for an assignment as from 3 months up to 1 year maximum.



3.3. Tax-related incentives

As a preliminary remark, it should be noted that the level of tax-related incentives may vary from tax year to tax year. For companies whose financial year corresponds with the calendar year (i.e. starting 1 January, ending on 31 December), the tax year is the year following the financial year concerned. For companies whose financial year ends before 31 December, the tax year is the year in which the financial year ends.

3.3.1. Accelerated depreciation

As a general rule, all tangible and intangible assets (with the exception of land and financial assets) are depreciable.

The depreciation booked on an asset is, in principle, tax-deductible for Belgian corporate income tax purposes.

The depreciation methods that are accepted by Belgian tax law are, in principle, the straight-line method and the double-declining method.

Under specific circumstances, Belgian tax law also

provides for an accelerated depreciation method (the so-called “double straight-line depreciation method”).

- **What kinds of companies qualify for the double straight-line depreciation method?**

The double straight-line depreciation method can only be applied by large companies that are investing located in well-specified Development Zone in the Wallonia Region and by small and medium-sized companies (SMEs) located in the Wallonia Region.

- **What are the benefits and which investments qualify for the double straight-line depreciation method?**

Eligible companies can use the double straight-line depreciation method for investments in equipment, tools and industrial buildings that fulfill certain conditions.

Under this method, the authorized annual depreciation is equal to twice the normal straight-line depreciation. The application of this depreciation method is however limited to a maximum of three consecutive tax periods.



3.3.2. Investment deduction

The investment deduction is a tax deduction available for companies subject to Belgian corporate income tax.

In short, this tax deduction allows to the tax-payer to offset a given percentage of the investment value (called 'one-off' deduction) or depreciation (called 'spread' deduction) of newly acquired qualifying investments from its taxable basis.

This deduction is granted in relation to newly acquired investments in qualifying tangible and intangible fixed assets used for business purposes in Belgium. Furthermore, the acquired assets should be activated and depreciable in the year concerned over a period of at least 3 years.

If, for a given tax year, the company has no positive taxable basis, the investment deduction is not lost, but can, in principle, be carried forward to future years (either only the next year, or indefinitely – see below). However, the use of that carried forward investment deduction is limited to some extent.

Two types of deductions exist, the "ordinary investment deduction" and the "increased investment deduction":

• **What is the ordinary investment deduction?**

SMEs (as defined as such by the Belgian Companies Code) can benefit from the investment deduction for ordinary investments made. As from 1st January 2016, the base percentage is set at 8%. However, SMEs applying for this ordinary investment deduction cannot benefit from the notional interest deduction.

The unused part of the ordinary investment deduction applied for by SMEs can be carried forward only to the next taxable period.

Companies that do not qualify as SMEs under the Belgian Companies Code can, in principle, not apply for the ordinary investment deduction. However, besides the base percentage, a specific percentage of 3% is applicable to all companies (i.e. also to large companies) investing in tangibles fixed assets used for the production process of reusable recipients.

• **What is the increased investment deduction?**

Belgian tax law also grants an increased investment deduction for specific investments.

The increased investment deduction is applicable to all companies investing in the following qualifying assets:

- patents or the right to exploit patents;
- tangible and intangible fixed assets which are used for the research and development of new products and advanced technologies which do not have any negative impact on the environment or help to decrease such negative impact;
- tangible fixed assets which are used for more rational energy consumption;
- Investments linked to air-extraction for the "horeca" sector.

In addition, SMEs can also benefit from that increased investment deduction when they invest in

- the digital invoicing and electronic payments systems or in the security of IT systems;
- the security of buildings.

• **What are the benefits of the increased investment deduction?**

I. For eco-friendly research and development investments

Ecological research and development investments give right to an increased investment deduction amounting to (for tax year 2015, and probably 2016 as well):

- either 13,5% of the acquisition value (increased one-shot investment deduction);
- or 20,5% of the annual depreciations that are allowed for tax purposes on the qualifying assets ("spread deduction" see below).

II. For energy-saving investments and patents

Energy-saving investments and patents give right to an increased one-shot investment deduction of 13,5% of the acquisition value for tax year 2015, and probably 2016 as well.

• **How does the spread deduction for companies works?**

In certain cases, companies can spread the benefit of the investment deduction and, instead of computing said deduction on the investment value, apply a higher rate (an increased spread deduction rate) on the amount of the yearly depreciation of the underlying assets.

For companies, it can only be applied to eco-friendly research and development investments and investments that are used in the production process of high-tech products.

3.3.3. Tax credit for research and development

Companies can choose to benefit from a tax credit for research and development.

This choice is considered as irrevocable, meaning that, through this choice, the company cannot benefit from the investment deduction (i) neither with respect to patents (ii) nor with respect to tangible and intangible fixed assets which are used for the research and development of new products and advanced technologies which do not have a negative impact on the environment or help to decrease such negative impact.

The tax credit is equal to the value of the asset, multiplied by either 13,5% (one-off credit) or 20,5% (in case of annual depreciation allowed for tax purposes), then multiplied by the general corporate tax rate (33,99%).

The main advantage to opt for that tax credit is that if, for 5 consecutive years the tax credit has not been used to offset tax liabilities (for instance if the company is not in a taxable position due to important investments made during a research or investment phase), it will be refunded by the Belgian tax authorities to the taxpayer.

3.3.4. Tax-exempted investment reserve

- **Which companies qualify for the investment reserve?**

Small and medium companies as qualified as such by the Belgian Companies Code.

- **What is the advantage of the investment reserve?**

The amount of investment reserve is tax-exempted, up to 50% of the increase in taxable retained earnings (before calculation of the reserve for investments) of the taxable period. The increase in taxable retained earnings that is taken into consideration for calculating the contribution to the investment reserve is limited to EUR 37.500,00 per taxable period, resulting in a maximum contribution of EUR 18.750,00 per taxable period.

3.3.5. Tax shelter treatment for audiovisual production

- **Which companies qualify for the tax shelter treatment for audiovisual production?**

A tax incentive is granted to companies, other than audio-visual working companies or film-producing companies, which conclude a framework agreement for the production of an authorised audiovisual work. This framework agreement has to be concluded with an authorized audio-visual Belgian resident company or with a Belgian establishment of a non-resident company and commit themselves to fund the audio-visual company for a given amount.

- **What are the benefits of the tax shelter treatment for audiovisual production?**

The taxable basis is exempted from tax up to a limit of 310% of the cash invested according to the framework agreement in the authorised audiovisual work. The total exemption claimed under the tax shelter treatment may not exceed 50% of the reserved benefits of the investor and is, in any event, limited to EUR 750.000,00 per tax year. In order to benefit from this tax shelter treatment, a certain number of conditions have to be fulfilled (among others formal and accounting conditions).

3.3.6. Advance tax agreements (rulings)

- **What are the advantages of filing an advance tax agreement request?**

The objective of this ruling practice is to provide an advance legal security to the economic actors regarding a planned investment/transaction. The taxpayer can ask in advance the opinion of the Belgian tax authorities on the tax treatment of the envisaged operation in order to obtain up-front certainty with regards to the taxation principles of its investment/transaction.

This ruling is, in most cases, issued within a reasonable term (2-4 months).

- **What is the scope of the advance tax agreements?**

General ruling practice covers, in principle, all matters for which the Federal Finance Department is responsible. As a consequence thereof, ruling practice is not only limited to income taxes but also covers VAT, registration duties, customs and excises, etc.

From a corporate income tax perspective, rulings can therefore be obtained with respect to transfer pricing matters (including the application of the cost-plus treatment for distribution centres and services centres), tax-deductible expenses, Belgian permanent establishments, depreciations, etc.

3.3.7. Notional interest deduction

The so-called «Notional Interest Deduction» (NID) aims at creating an equal tax treatment between financing through debt and equity. It allows Belgian tax-resident companies and Belgian branches of non-resident companies to deduct tax-wise a deemed interest cost for the equity invested in the Belgian company or branch.

The NID regime provides for an annual deduction against all taxable income (with a few exceptions). The concept of NID is based on the traditional financial theory that a company's return on equity is a combination of a risk-free return component plus a risk premium to cover the non-diversifiable risk to which the company's equity is exposed. NID aims at treating this risk-free interest component in the equity return as a tax-deductible expense for the cost of capital. It is a deduction for tax purposes only, without any form of cash outlay.

The NID base is determined on the basis of the Belgian GAAP equity of the company or branch. Certain adjustments apply to the NID basis to avoid multi-stage deductions (e.g. investments in shares, subsidies, reevaluation surpluses and certain other items need to be deducted from the equity). In addition the NID needs to be reduced by the part that is deemed to stem from foreign permanent establishments.

The NID rate is fixed annually, based on the average yield of the Belgian ten-year linear government bonds, with a maximum rate of 3%. The NID rate for the financial year ending on 31/12/2015 is 1,63%.

Whilst the Belgian nominal corporate tax rate is 33,99%, NID may substantially reduce the effective tax rate of equity-financed companies or Belgian establishments below the nominal rate.

Excess NID cannot be carried forward anymore.

3.3.8. Deduction for patent income

In 2007, Belgium introduced a special tax deduction for patent income, the so-called "Patent In-

come Deduction". Belgian companies and Belgian establishments engaged in patent development in a research centre, and patent exploitation can benefit from a special tax deduction equal to 80% of patent income.

The eligible patent income not only covers patent royalties but also patent income embedded in the supply of goods or services (value of the patent embedded in the product or services revenue). Whilst 80% of the gross income is tax-exempt, most costs relating to the patent income remain normally tax-deductible.

This tax measure sums up to an effective tax charge on the eligible patent income of maximum 6.8%. Combined with the benefits of the notional interest deduction and other tax incentives, the effective tax rate can be significantly lower.

3.3.9. Tax exemption on R&D subsidies

Companies benefit from a tax-exemption on R&D bonuses and subsidies granted by regional authorities.

3.3.10. Non-recurring, result-linked benefits

Provided several conditions are met, companies can grant their employees non-recurring bonuses which are exempted from social security contributions and from income tax up to a sum of EUR 2.798 (for income year 2016) per calendar year per employee.

A special levy of 33% is due by the company on the amount up to the EUR 2.798 (for income year 2016) cap, to be paid on 31 December of the year in which the benefit is granted.

If the benefits exceed EUR 2.798 (for income year 2016), regular social security contributions are due on the excess by both employee and employer and is also subject to standard tax rules.

The principal conditions are:

- The scheme must be introduced within the company through a collective bargaining agreement, and, in the absence of a union delegation, through a procedure largely similar to that provided for establishing corporate work regulations.

- The plan should be based on clear collective targets that are easy to measure.
- The plan provides methods of control.
- The net amount payable cannot exceed EUR 2.798 per employee and per year (for income year 2016).
- The plan must apply to all employees or to certain categories of employees.
- The plan cannot replace any other bonus plan or remuneration.

3.3.11. Partial exemption to remit withholding taxes

To reduce the tax burden on shift work and overtime, employers already benefit from an exemption of the obligation to remit (part of) the withholding tax to the tax authorities.

With respect to overtime, exemption for the employer to pay a portion of the withheld wage taxes to the Belgian Treasury for the first 65 hours of overtime per employee has now been extended to the first 100 hours as from 1 January 2009, and to the first 130 hours as from 1 January 2010. Depending on the industry, those 130 hours have been extended (eg. «Horeca» sector first 360 hours as from 1 December 2015).

With respect to employment during night time and in shifts, the exemption to pay the withheld wage taxes to the Belgian Treasury will be increased as of 1 January 2016 to an amount of 22.8 percent of the taxable remuneration including shift premiums (but excluding holiday pay, year-end bonus and arrears). As of 1 June 2009, the exemption with respect to employment during night time and in shifts will be subject to the condition that the employees for whom the employer claims this exemption are employed during night time or in shifts for at least one-third of their work time of the month for which the exemption is claimed.

As of 1 August 2015, 10% of the payroll withholding taxes withheld for remunerations attributed by a start-up (a company registered since less than 48 months within the «Banque Carrefour des Entreprises») does not need to be remitted to the Belgian Tax Authorities provided that the starter company falls in the scope of the Act of 5 December 1968 and is considered as a small company in the meaning of article 15 of the Code des Sociétés (i.e. an SME). In order to benefit from the partial withholding tax exemption, specific formalities must be fulfilled.

3.3.12. Reduce the salary cost of researchers

The law provides from a partial exemption to remit withholding taxes for companies and institutions employing researchers and developers. On January 1, 2007 the exemption for employers of researchers was expanded from universities and scientific institutions to include private companies. As of 1 January 2009, 75% of the payroll withholding tax withheld for remunerations attributed by a Belgian company or establishment to qualifying researchers does not need to be remitted to the Belgian Tax Authorities provided that the researchers are employed in research and development programs and have a qualifying degree. As of 1 July 2013, the exemption has been extended from 75% of the withheld taxes to 80% of those withheld taxes.

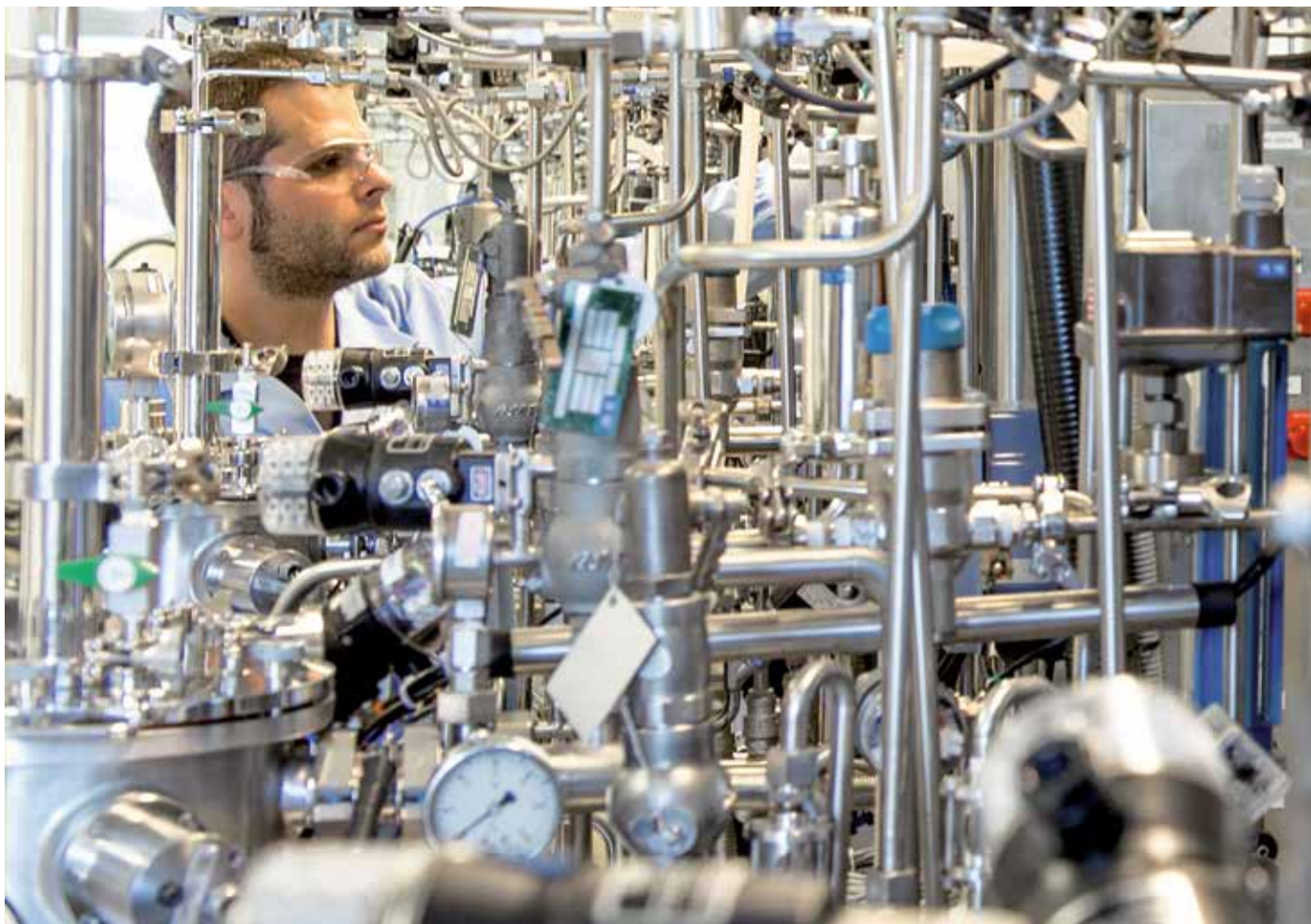
3.3.13. Tax reduction for investments in start-ups

A tax benefit is granted to private individuals who either directly (eg. via a crowdfunding platform) or via a start-up fund acquire new shares in a start-up (a company registered since less than 48 months within the «Banque Carrefour des Entreprises»). Subject to certain conditions, amongst others the condition to hold the shares for at least 48 months, they can obtain a tax reduction of 30% (SMEs) or 45% (micro-enterprises) of the sum invested if they acquire shares in a start-up on or after 1 July 2015 for a value of up to 100.000 per taxpayer. Under this system, the start-up can raise a sum of up to EUR 250.000 either directly from private individuals or via a start-up fund.

3.3.14. Exemption for interests in relation to SME crowdfunding

From 1 August 2015, investors are also encouraged to provide loans to start-ups (companies registered since less than 48 months within the «Banque Carrefour des Entreprises») via a crowdfunding platform: the interests on the first bracket of EUR 15.000 (income year 2015) of a loan provided by a taxpayer to a start-up is exempted from any personal tax – in contrast to the standard 25% rate applicable to interests derived from other loan types.

For this exemption to apply, certain conditions must be met, amongst others the condition for the loan to be concluded for a period of minimum 48 months or the condition for the start-up to be



considered as a small company in the meaning of article 15 of the Code des Sociétés (an SME).

3.3.15. Innovation premium (one-off payment)

Under certain conditions, an innovation premium can be granted by the company to an employee or a group of employees who develop an innovation which brings a real extra-value to the company. The employer must implement the innovation within the company.

If the conditions are met, the innovation premium is exempt from social security contributions (employee and employer part, but the names of the beneficiaries as the amount of allowances must be communicated to the NOSS) and is exempted from personal income tax.

IV. WORKFORCE ISSUES

4.1 Who is concerned?

All the companies that employ foreign or Belgian employees in Belgium must comply with the Belgian labour and social laws.

4.2 What are the applicable rules?

4.2.1 Employment issues

4.2.1.1 Engaging employees in Belgium

- **Recruiting**

The easy way to staff your organization is to contact the Wallonia Employment Agency (FOREM).

This official government agency maintains a database containing the professional characteristics of potential candidates for employment. These services are free of charge. Alternatively, you can also contact professional search firms.

You will find a wide choice of agencies that are specialised in the recruiting of temporary personnel.

- **Social documents**

- a. Compulsory registrations*

When an employer hires employees in Belgium, he or she has to comply with several compulsory registrations. The employer has to obtain insurance against work-related accidents. The employer should also within 90 days following the hiring of the first employee, register to a “family allowances fund” (which grants a family (child) allowances).

- b. Work regulations*

Every employer has to establish work regulations. This document specifies the working conditions on the level of the company, such as working time, disciplinary actions,...

- c. Payslip*

Each month, the employer must hand over a salary

statement (payslip) to each employee. The employer must also once a year, draw up an individual statement for each employee, which summarizes the data of the monthly payslips, and issue a tax form 281.10 to each employee, which enables him or her to fill out his income tax return.

All these regular payroll formalities can be performed by a recognized external payroll service («social secretariats») on behalf of the employer.

- **Foreign employees**

To live and work in Belgium, a distinction needs to be made between the procedure to obtain a Belgian work permit and the procedure to be able to legally reside in Belgium (request for a visa and a Belgian residence permit). First of all, a work permit should be applied for.

- a. Work permit application*

Every employer (whether Belgian or foreign) who intends to employ a non-EEA national in Belgium, has to fulfil a number of formalities.

The employer has to obtain an authorisation to employ an employee. The employee has to be in possession of a work permit. These documents have to be obtained prior to the commencement of work in Belgium. In practice, both requests are filed at the same time. Both documents are valid for a maximum period of 1 year and are extendable. In order to obtain a work permit, the employer (or its mandatory) should send an official application form, accompanied by the set of required documents to the competent authorities.

A limited number of work permit exemptions for certain categories exist.

Due to the regionalization of the labour market policy (also immigration aspects related to work) and the transposition of the EU Directive on a combined work and residence permit, it is expected that the procedure will change significantly in the course of the first half of 2016.

- b. Professional card*

All self-employed non-EEA nationals, having their principal residence in Belgium, whether remune-



rated or not remunerated, need to obtain a valid professional card.

c. *Application for a visa and Belgian residence permit*

NON- EU nationals

In cases where the employees have the intention to stay in Belgium for a period which exceeds 90 days within 180 days they must apply for a Belgian residence permit with the municipality of their place of residence.

In order to obtain this Belgian residence permit, they first need to apply for a visa with the Belgian Embassy or Consulate of the country where they officially reside. This application can only be filed after delivery of the work permit and prior to the arrival in Belgium.

This visa will be stamped in the employee's national passport. It will enable him/her to get into Belgium and to obtain a Belgian residence permit, which is

a necessary formality.

EU nationals

In cases where the employee is an EU national a visa is (in principle) not required; in such case only registration with the municipality and the obtaining of the residence permit in Belgium is required.

• **Limosa**

As from 1 April 2007, a prior duty of electronic notification has been introduced for employees who are seconded to Belgium by their foreign employer, temporarily or partially, and to self-employed persons who either establish temporarily in Belgium or partially carry on self-employed activities in Belgium.

This notification duty applies to any employee in Belgium temporarily or partially and normally works in one or more countries other than Belgium or is hired in a foreign country. This duty of notification is part of the government's Limosa project, to establish records on all foreigners working in Belgium.

4.2.1.2 Employing employees in Belgium

• **Use of language**

Employers whose seat of exploitation is situated in the French-speaking region are required to use French in any written or oral communication with their employees.

• **Employment agreements**

a. Do you need to have a written employment agreement?

A written employment agreement is not compulsory. Please, note, however, that European regulations oblige the employer to provide every employee with a written document containing information on the essential aspects of his/her employment agreement such as the identity of the parties, the place of work, the title, the date of commencement, and so on.

Furthermore, certain specific contracts (i.e. employment agreement with a fixed term, contract concluded for a specific task, part-time work, ...) need to be established in writing prior to when the employee commences his work activities. Certain provisions also have to be established in writing (i.e. non-competition clause many of these prior to when the employee starts his activities (i.e. probationary period, dismissal clause).

Generally, it is always useful to have a written employment agreement in order to provide other clauses, such as confidentiality.

b. Major distinction in Belgian labour law: blue-collar (mainly manual labour) and white-collar workers (mainly intellectual work).

On 26 December 2013 the Belgian Parliament adopted the Act regarding the introduction of a unified status for blue and white collar workers, with respect to the notice periods, the 'carenz day' and related policy measures (hereafter the 'Unified Status Act').

The Unified Status Act entered into force as from the 1st of January 2014.

The unification of the termination rules, in general, and the notice periods, in particular, constitutes the corner stone of the Unified Status Act.

Even if the objective is the unification of these two status, it remains some differences such as in the

field of annual holidays, regulations applicable in case of incapacity to work etc.

It is expected that these matters will change significantly in the course of 2016, to increase unification of the applicable regulations to blue and white-collar workers.

Different categories of employment agreements

Specific regulations apply to the following types of employment agreement:

- sales representative;
- student;
- replacement agreement;
- home-working agreement;
- engagement of temporary employees;

• **Working conditions**

a. Wages and salaries

- Monthly/Hourly salaries

The Joint committees have determined a minimum hourly wage for blue-collar workers for most industries. The Joint committees also establish minimum monthly salaries for white-collar workers; these are often linked to the function and seniority. They also provide for a system of automatic linking of the gross salaries to fluctuations in the consumer price index (inflation).

- Bonuses/Premium

The rules concerning the payment of a year-end premium are set up in collective labour agreements concluded in the Joint committees. Many of them foresee a so-called '13th month'.

- Vacation pay

At the time the employee (only for white-collar workers) takes his main vacation, the employer must pay him – on top of the normal salary – a supplement called 'double vacation pay', which amounts to 92 % of the monthly salary.

For blue-collar workers the vacation period is covered by an allowance paid by the vacation fund (which is financed through the social security contributions on the workers' salary).

b. Labour time

• Normal labour time

The 38-hour work week has to be applied ac-

According to the law. However, some Joint committees have reduced the working hours .

- Overtime

Overtime is strictly regulated under Belgian law. As a general rule, overtime is only permitted in certain cases and circumstances, most notably in cases of work in successive shifts.

Additional wages and salaries for overtime are 50 % (100 % for overtime work on Sundays and legal holidays) and days of compensation must be awarded.

Legal provisions governing working hours do not apply to some specific categories of employees such as employees occupying a managerial position (or a position of trust) or sales representatives.

- Flexible working schedules

Companies are allowed to introduce flexible working schedules. Some flexible schedules even offer the opportunity to work temporarily in the company up to 12 hours/day and 84 hours/week.

c. *Major cases of employment agreement's suspension*

- Illness of an employee

In principle, a white-collar worker is entitled to his or her (guaranteed) salary at the expense of the employer during the first 30 days of incapacity to work due to sickness or accident. Thereafter, his pay is covered by the social security system (60 % of his gross salary with a ceiling).

A blue-collar worker is entitled to his or her salary for the first 7 days. During the next 23 days, he or she is entitled to an indemnity paid by the employer and the sickness fund. Thereafter, he or she will only receive an indemnity from the sickness fund.

- Annual vacation and Public holidays

The regulations on annual vacation and vacation pay apply to all persons, Belgian and foreign nationals, subject to the Belgian social security system for employees.

According to these regulations, employees are entitled to annual vacation, the duration of which is proportional to the number of working days and legally assimilated days during the previous year (for a whole year of activity,

24 working days on a 6-day-week basis, and 20 days, on a 5-day-week basis). During the days of vacation, employees are entitled to their normal salary for the days of vacation and an extra vacation pay.

Employees are entitled, provided certain conditions are complied with, to their normal salary for the statutory national public holidays (fixed at a total number of 10), or for the day substituted if the holiday falls on a Sunday or another usual day of rest.

- Special paid leave and career interruption

There are several possibilities for a full or partial career interruption. During the career interruption the employees will be entitled to allowances paid by the social security authorities.

d. *Employees representation*

- Belgium's social consensus model

The collective bargaining process is conducted at three different levels: the company, the sector and on national level.

Employees are organised in industry-wide trade Workforce Issues unions covered by three general trade unions. Employers are organised in industry-wide federations.

The system enables the establishment of inter-professional collective labour agreements within the National Labour Council (national level) or the Joint committee (sector). These agreements are generally made legally binding by Royal Decree, and are thus regulations that are applicable to all employers and employees.

- Workers councils

A workers' council is made up of the head of the enterprise and its delegates and elected representatives of the employees. Elections for the employee representation in the workers' councils are compulsory for enterprises whose average total personnel amounts to 100. Elections take place every four years.

The workers' council deals with, for instance, the preparation and modification of the work regulations, the setting of the annual holiday period and questions relative to employment. Furthermore, the workers' council must receive periodic information on matters relating to personnel and financial information.

- Committee for Prevention and Protection
Enterprises whose average total personnel amounts to 50 or more, must organize elections for a Committee for Prevention and Protection every 4 years. The main duty of the Committee for Prevention and Protection is the detection of risks of any nature that can affect security, hygiene or health.
- Union-delegations
Union-delegations represent the employees at company level. The conditions of the set up of this delegation and the working rules are fixed by the Joint-committees.

4.2.1.3 Termination of the employment agreement

a. Procedure

The employer can terminate an employment contract either by giving advance notice to the employee - the contract is then terminated at the end of the notice period - or by termination with immediate effect and payment of compensation in lieu of notice.

In principle, no special formalities require to be adhered to when dismissing employees with payment of compensation in lieu of notice.

For both white and blue-collar workers, in case the employer would like to terminate the employment agreement concluded for an indefinite period of time by giving advance notice, the notice must be in writing and be sent by registered mail or the notification can be made by bailiff.

b. Length of notice

The Unified Status Act lays down the notice periods to be observed by both employer and employee when terminating an employment agreement of indefinite duration.

Same notice periods apply for both blue and white-collar workers since 1 January 2014. Since all notice periods are expressed in a number of weeks, any notice period served will take effect on the Monday following the week during which it was served. The new set of notice periods applies to both the employment agreements which were concluded before as after the first of January 2014.

With regard to the employment agreements which were concluded before this date, a set of transition

rules has been introduced in order to safeguard the termination rights which were built up/acquired by the employees up until the 1st of January 2014.

The length of notice period in case of a termination as from 1 January 2014 must be determined by taking following two components into consideration:

- The first part of the notice period is determined on the basis of the seniority of the worker until 31 December 2013.

For blue collar workers

Blue collar workers are in principle entitled to a period of notice between 28 days and 129 days (depending on their situation).

Other rules can be applicable depending on the type of industry to which the company belongs.

For white-collar workers

The dismissed employee whose gross annual salary exceeds the EUR 32.254 threshold on 31 December 2013, shall be entitled to a notice period of 1 month per started year of seniority (with a minimum of 3 months).

The dismissed employee whose gross annual salary is below the EUR 32.254 threshold on 31 December 2013, shall be entitled to a notice period calculated on the basis of the legal, regulatory and conventional rules applicable on 31 December 2013 (i.e. 3 months per any started period of 5 years seniority).

- The second part of the notice period is determined on the basis of the seniority acquired as from 1 January 2014.

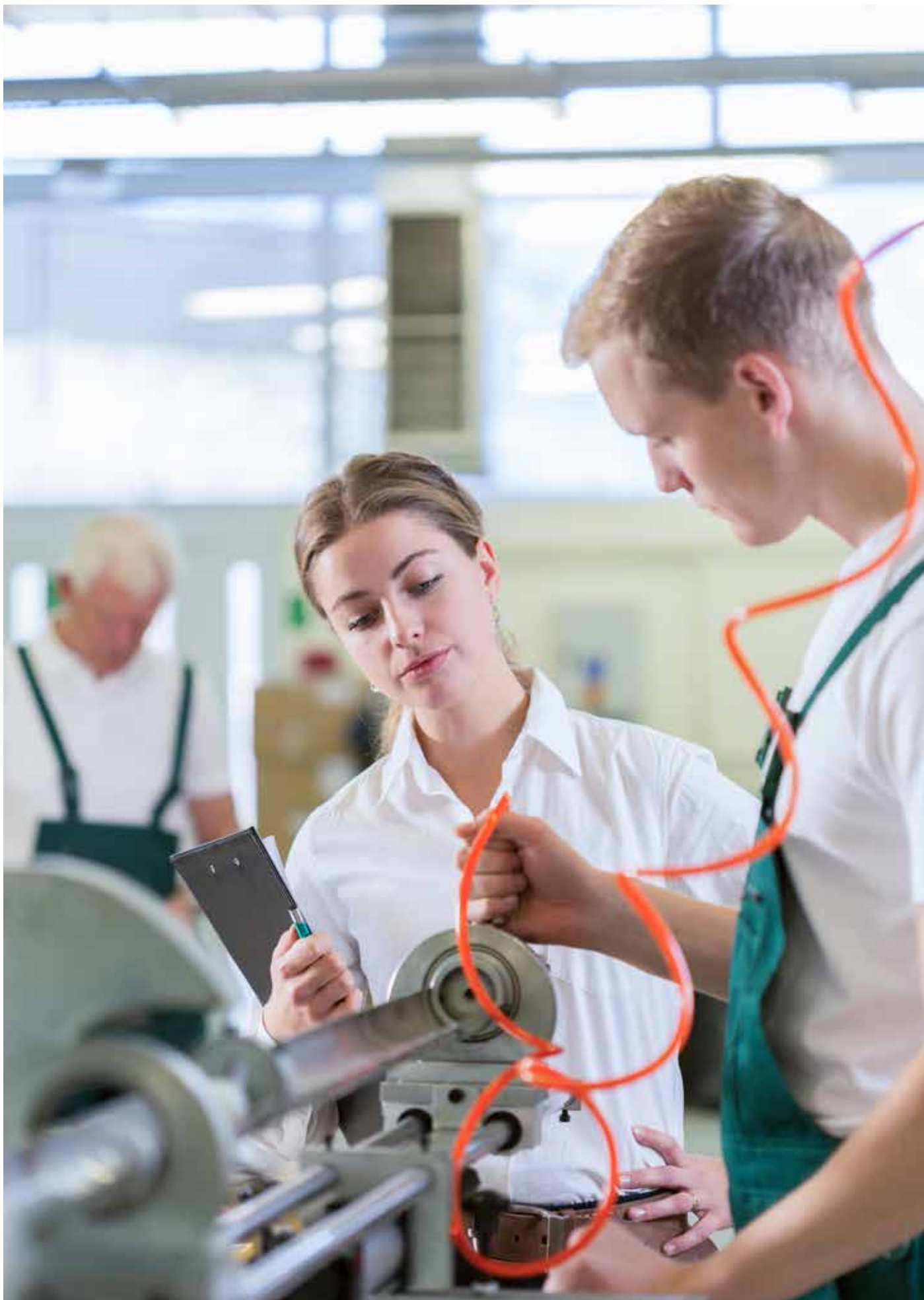
The total notice period is determined by adding the two calculations above.

c. *Specific rules and exceptions for (certain) categories of blue collar employees*

Taking into account that the new set of notice periods constitutes a considerable increase of the termination cost for the blue collar employees, the Belgian government has included several measures in the Unified Status Act which aim at mitigating the termination cost increase for the blue collar workers.

These measures include:

- a transitional exemption period of 4 years for certain categories of blue collar workers (assessed at the sector level);



- the introduction of a so-called 'termination compensation indemnity', paid out by the National Employment Office and allocated to blue collar workers which meet certain seniority thresholds.

d. Abolishment of the probation period

As of 1 January 2014, it is no longer possible to include a probation period in employment agreements.

The abolishment of the probation period also has an impact on the non-competition clause and the educational clause («scholingsbeding» /»clause d'écolage») as, under the former legislation, these clauses did not apply during the probation period. The Unified Status Act therefore stipulates that those clauses will not be applicable when the employment agreement is terminated within the first 6 months of employment. It concerns a fixed term and as such a suspension of the employment agreement (due to holiday, sickness...) will not extend this 6 months' term.

e. Motivation of the dismissal

Since 1 April 2014, a motivation obligation in case of dismissal has been introduced in Belgian legislation. Although CBA n°109 does not provide an obligation as such for the employer to motivate a dismissal, it entitles the employee to request from the employer the reasons that have led to the dismissal.

Moreover, CBA n°109 also foresees in a penalty in case the dismissal would be apparently unreasonable. This would be the case if the reasons for dismissal would be based on reasons that are not linked to the suitability or behaviour of the employee or that would not be based on the necessities of the functioning of the company and to which a 'normal and prudent' employer would never have decided.

In case of such an apparently unreasonable dismissal, a court could grant the employee concerned with an additional compensation of which the amount varies between 3 and 17 weeks of salary.

f. Protected employees

Special rules restrict the employer's right to terminate certain categories of employees, e.g., pregnant women, employees who have requested an interruption of career or educational leave. In case

of violation of these rules, the payment of additional indemnities is provided for.

Furthermore, employment agreements with employees who are effective or substitute members or (certain) not elected candidates to the Workers' council or the Committee for Prevention and Protection or Union delegates cannot be terminated except for very restrictive reasons and after receiving the necessary approval.

g. Unilateral termination for serious cause

Either party may terminate the contract without notice or before the expiration of the fixed period of time for serious cause. Certain formalities, however, must be strictly observed.

4.2.2 Social security issues

4.2.2.1 Social security for employees

a. Application

As a general rule, the Belgian social security system is applicable to employees (including foreigners) employed in Belgium and whose employer is established in Belgium or - if he is established abroad - has an exploitation seat in Belgium, to which the employees are attached.

Belgium has established several multilateral or bilateral international agreements with clauses on determining the applicable legislation. Normally the employee is subject to the social security scheme of the 'work country' but most of the agreements contain an exception in case of 'posting'. Posting implies that an employee who usually lives on the territory of one country shall be subject to the social security legislation of that country, in the event he is sent to another country by his employer to go and work temporarily on account of the employer.

b. Obligations

Each foreign or Belgian company that engages employees who will be subject to the BE social security scheme has to register with the National Social Security Office (RSZ/ONSS), which collects the social security contributions due by the employee and the employer, by means of filing an electronic declaration of employment to the National Social Security Office (RSZ/ONSS), commonly referred to as 'DIMONA', before the employment starts.

c. Contribution rates and example

• Contribution rates

The social security benefits are financed by contributions paid both by employers and employees to the National Social Security Office. No ceiling is applied on the remuneration to calculate the contributions.

The personal employee's contributions amount to 13,07%. For the fourth quarter of 2015, the employer's contributions amount from 32,94 %, 34,63%, to 34,65% (white collar workers). The employer's contributions are 38,77%, 40,46% and 40,48% in case of blue-collar workers.

These contribution percentages depend on the average number of employees the employer employed during the previous calendar year (less than 10, between 10 and 19 and more than 20 employees).

These percentages, for blue-collar workers, have to be calculated on 108% of the gross salary and to be increased by an annual contribution of 10,27%.

The employer has to send a quarterly declaration to the National Social Security Office, justifying the social security contributions due, and has to pay the social security contributions, or, if provisions have already been paid (a legal obligation in certain cases), the balance of the quarterly social security contributions due, before the end of the month following the quarter for which the contributions are being paid.

The «payroll agencies» can take care on behalf of the employer of the payment of the social security contributions.

Example: cost of an employee in Belgium

The following example is given to illustrate the monthly salary calculation. It does not take into account the calculation of the vacation paid, the end-of-year bonus, the company car or other benefits. Furthermore, this example does not take into account any special charges that are due in certain cases nor reductions plans.

Facts: White-collar and blue-collar workers (isolated and without children) earning a monthly salary of EUR 1.850 gross and working in a company with less than 10 workers.

Calculation:

	White-collar worker	Blue-collar worker
Gross salary (€)	1.850	1.850
Employee's social security contributions (€)	-241,80	-261,14
Taxable salary (EUR)	1.608,20	1.588,86
Tax advances (€)	-393,53	-379,55
Final employees' salary (€)	1.214,67	1.209,31
Employer's social security contributions (€)	609,39	717,25
Total employer's cost (€)	2.459,39	2.567,25

d. Progressive reduction of the employers' social security contributions

In the framework of the so-called "tax-shift" and in order to enhance the Belgian businesses' competitiveness on the market, the employer's contributions should be gradually lowered in order to reach 25% by January 1st, 2018.

This percentage would thus become the new nominal rate (rate applicable before applying potential structural reductions) which would be partially financed by a restriction on the structural reductions (overall decrease and total repeal for high-salary workers).

e. Benefits

Employees submitted to the Belgian social security scheme, can benefit from:

- Family benefits;
- Unemployment benefits;
- Retirement pensions;
- Medical care and hospitalisation;
- Sickness benefits;
- Maternity benefits;
- Insurance against accident at work and professional disease;
- Paid annual vacation (blue collar workers).

4.2.2.2 Social security for self-employed

a. Application

As a general rule, a person will be considered as self-employed when not working as an employee or as a civil servant. A decisive criterion to determine whether someone should be qualified as self-employed will be the lack of a relation of authority.

In Belgium, Belgian company officers (directors) are presumed by law to perform their mandate on a self-employed basis. This presumption of self-employed activity can however be rebutted when serving without compensation.

b. Obligations

A self-employed must choose and join a social insurance fund for the self-employed. The self-employed will be liable - as a general rule - to pay a quarterly social security contribution (calculated on a notional annual remuneration).

c. Contribution rates

Every self-employed person (whether already established or just starting out) will always be liable to pay provisional contributions.

These provisional contributions will in the first instance be estimated by the social insurance fund on the basis of the professional income of the year in which self-employment commenced, or in the third year previous to the year in question if the person was already active as self-employed.

An adjusting payment will then be made with respect to these provisional contributions two years later, once the professional income actually received for the contribution year has been determined.

For example, in 2015, this means that in the first instance the provisional contributions will be estimated on the basis of the professional income of 2012 for those already established as self-employed. Those just starting out as self-employed will pay social security contributions on the basis of an amount they themselves have declared or of the statutory minimum contribution.

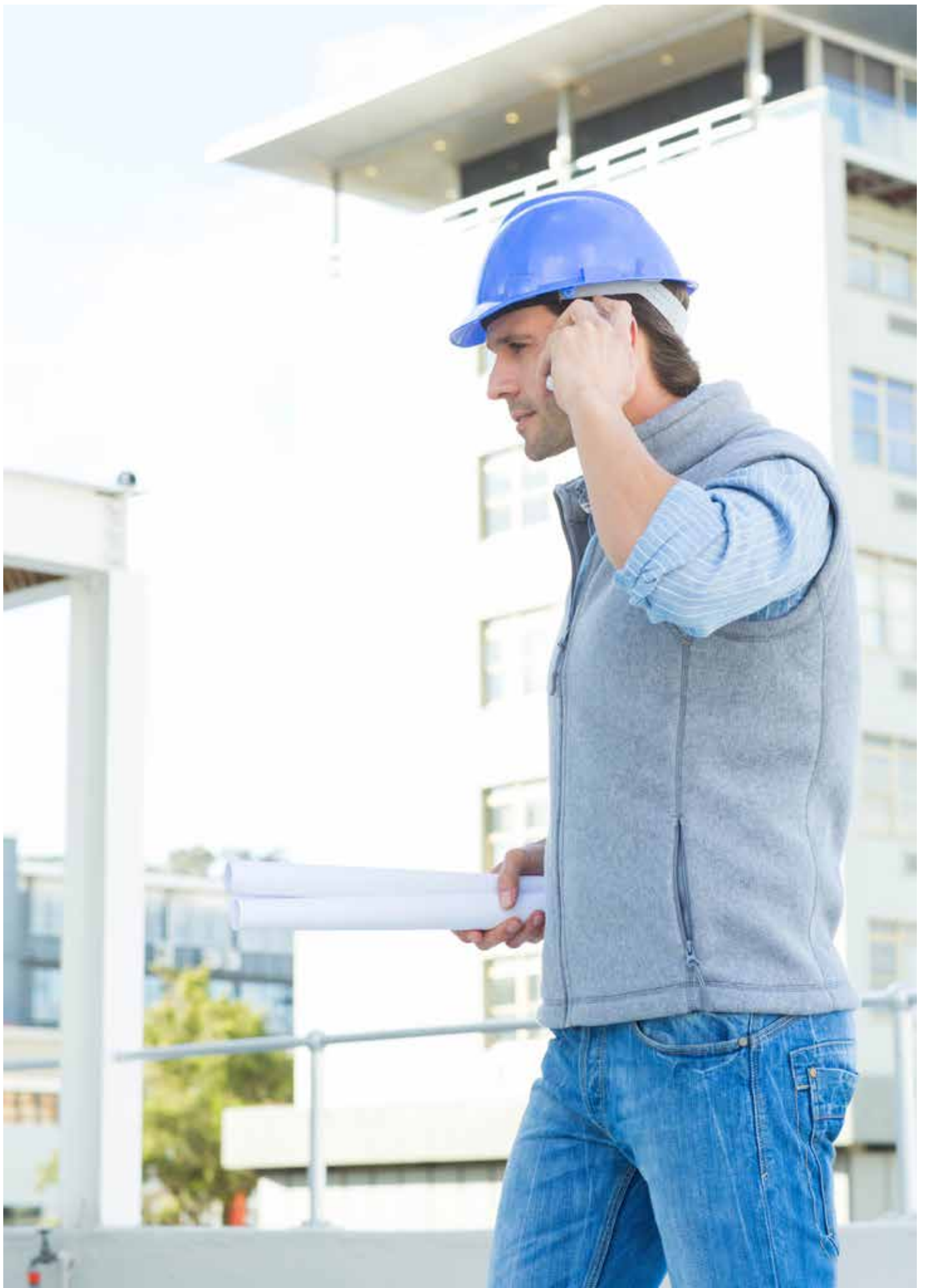
For the individuals performing their self-employed activities on a main basis and who are already established, both provisional as definitive contributions amount to 22% on the remuneration of the reference year between EUR 12.870,43 and EUR 55.576,94 and to 14,16 % on the remuneration between EUR 55.576,94 and EUR 81.902,81 (rates applicable for income year 2012).

Individuals who have a self-employed job in addition to their principal occupation (e.g. as a salaried person) pay no contributions or only a reduced contribution as long as their annual income does not exceed a particular amount determined every year.

d. Benefits

Self-employed registered with the Belgian social security scheme can benefit from:

- Family benefits;
- Retirement pensions;
- Sickness benefits;
- Medical care and hospitalisation;
- Maternity benefits;
- Bankruptcy allowances.



V. TAX TREATMENT: CORPORATE TAX

5.1 Who is subject to Belgian corporate income tax?

Corporate income tax is levied on profits earned by Belgian companies.

In addition, foreign corporations are in principle subject to the non-resident income tax when they have a Belgian establishment. A Belgian establishment is a permanent establishment by means of which a foreign enterprise carries out its business activity, wholly or partially, in Belgium.

5.2 How is the taxable base determined?

5.2.1 General principles

Belgium currently does not apply any tax consolidation mechanism neither any controlled foreign company (so-called “CFC”) deemed taxation (i.e. a taxation of the profits of a subsidiary in the hands of the shareholder, Belgian resident in this case).

The corporate income tax is, in principle, levied on the worldwide income but many rules narrow down the taxation to the net Belgian profits (see below).

Belgium has concluded around 90 Double Tax Treaties (DTT) with other countries. The main objective is to foster economic exchange with these countries through eliminating double taxation. This DTT network offers a unique platform for further internationalization of Belgian activities.

As a general rule, the taxable basis is made out of the net taxable income (i.e. the “adjusted” accounting result) to which some tax deductions are applied.

5.2.2 Net taxable income

The starting point for determining the net taxable income is the company’s annual accounts, and, more precisely, the accounting result (i.e. difference between the profits and charges). Some adjustments are nevertheless made in order to bring the figures into line with the Belgian tax rules.

a. Profits...

Principles

In principle, the income of a company comprises all profits realised by carrying out the corporate purpose.

Capital gains

Capital gains, in principle, are taxable upon their realisation. However, capital gains realised on tangible and intangible fixed assets on which depreciation has been accepted for tax purposes and that have been held for more than five years can be subject to a deferred and spread tax treatment, provided that the proceeds of the sale are reinvested in tangible or intangible assets (subject to depreciation) in Belgium within three years (or five years in case of reinvestment in buildings, vessels or aircraft). If all the above conditions are complied with, the tax charge of the capital gain is spread over the depreciation period (allowed for tax purposes) of the asset(s) that is/are acquired to fulfil the reinvestment condition. Deferred and spread taxation occurs at the basic corporate income tax rate.

As an exception to this general rule, capital gains on shares realized by SMEs are tax-exempt if dividends from such shares would meet the so-called “taxation condition” under the dividend received deduction (see below) and would be held at least for a period of one year. The “minimum participation condition” provided under the dividend received deduction does not need to be satisfied. In the hands of large companies, the capital gains on shares are taxed at a rate of 0,412% (provided the same conditions as mentioned for SMEs would be met). If the so-called “taxation condition” is met but that the one year holding period is not met at the moment of sale, the capital gain is subject to specific taxation rate of 25,75% (instead of the regular rate of 33,99%).

b. ...Less charges

Principle

As a general rule, expenses are tax-deductible provided that they are incurred during the taxable period in order to maintain or increase the company’s taxable income and that the reality and the amount of such expenses can be evidenced.

Disallowed expenses

Notwithstanding the above rule, some expenses are not tax-deductible in Belgium, such as, Belgian corporate income tax, some regional taxes, part of car-related expenses or restaurant expenses, capital losses on shares, some social benefits etc. (the so-called “disallowed expenses”).

Interest and royalty charge

Interest and royalty charges are in principle tax-deductible. However, when such payments are made - directly or indirectly - to a foreign entity or to a foreign branch, which is not subject to tax or is subject - with respect to the payments received - to a tax treatment that is notably more advantageous than the Belgian tax treatment on such income, there is a reversal of the burden of proof. Such charges will be disallowed, unless the Belgian company can prove that the payments are at arm's length and that they correspond to genuine and real transactions.

Interest paid or attributed will be disallowed if and in so far as the total amount of the loans received from beneficiaries, who are either not subject to income tax or who are subject, with respect to interest income, to a considerably more advantageous tax treatment than the ordinary Belgian income tax treatment, or from beneficiaries which are members of the same group, exceeds five times the sum of the taxed reserves at the beginning of the financial year and the paid-up capital at the end of the financial year. Publicly issued bonds and other publicly issued securities are excluded, as well as loans granted by financial institutions, as far as they are not located in a tax haven. A specific exemption regime exists for cash pools leaders.

Intercompany transactions

If the Belgian tax authorities consider that charges for transactions between related companies (e.g. for goods, services or financing) are inappropriate (i.e. cannot be considered to be at arm's length), they can, under certain conditions, increase the taxable income of the company granting the benefit by adding back the amount that cannot be justified. In the same way, no business loss can be deducted from the part of the profits deriving from abnormal or gratuitous benefits that the taxpayer has realised, directly or indirectly, in whatever form or by whatever means, from a company with which it has directly or indirectly links of interdependence.

5.2.3 What are the main tax deductions?

a. Exempt foreign income

In principle, the income derived by a Belgian company from a foreign branch will be exempt from Belgian corporate income tax if the branch is located in a country which has concluded a double tax treaty with Belgium.

Losses of permanent establishments can be used to offset Belgian profits, but are subject to a “re-capture” in case of later deduction abroad.

b. Dividend received deduction

Dividends received by a Belgian company are 95% exempt from corporate income tax (effective tax charge of 1,7%).

In order to benefit from the dividend received deduction, the following conditions have to be met:

- a “minimum participation condition” : the Belgian company must have a participation of at least 10% in the capital of the distributing company or a participation with an acquisition price of at least EUR 2.500.000,00 ;
- a “holding period condition”: the shares must be held in full ownership for an uninterrupted period of one year (if not met, the company can commit to keep the shares);
- a “taxation condition”: the dividend income received must have been subject to tax at the level of the distributing company or its subsidiaries.

There are numerous exceptions to these rules that need to be analyzed on a case-by-case basis.

The excess of dividend received deduction can be carried forward indefinitely.

c. Deduction of tax losses

Tax losses can be carried forward without any limitation in time and can be deducted from future profits. There is no tax loss carry-back provision under Belgian tax law.

In case of change of control of a Belgian company, the amount of the tax loss to carry- forward available in that company can no longer be offset against future profits, unless the change of control can be justified by legitimate needs of a financial or economic nature.



In addition, in case of tax-free restructuring (i.e. merger, split or contribution of a company's assets and liabilities), Belgian tax law provides for special rules according to which part of the tax losses carried forward are forfeited. In practice, the tax losses are transferred based on a pro rata basis.

- d. Investment deduction**
- e. Notional interest deduction**
- f. Patent income deduction**

The aforementioned measures have described in the Chapter related to **Business incentives**. We therefore refer to the comments made in that Chapter.

G. Financial services players

Some of the above tax deductions may be limited based on specific rumles applicable to banks and insurers which we will not comment.

5.3 How is the corporate tax calculated?

5.3.1 Rates

The standard corporate income tax rate is 33%. This rate is increased by a 3% crisis tax levied on the 33%, which leads to an effective corporate tax rate of 33.99%.

Reduced rates can be applied when the taxable profit of the company does not exceed EUR 322.500,00 and when the company fulfils a number of additional conditions (i.e. condition with respect to the activities of the company, its shareholding structure, the return on capital and the remuneration of its managers).

The different rates (including the 3% crisis contribution) applicable are therefore the following:

Taxable net profit	Reduced rate applicable
0,00 - 25.000,00	24.98%
25.000,00 - 90.000,00	31.93%
90.000,00 - 322.500,00	35.54%

5.3.2 Increase for lack or insufficiency of advance tax payments

The corporate income tax can be prepaid in quarterly instalments during the year, with a final settlement when the assessment is issued.

In case the company does not make any advance tax payments or in case the advance tax payments are not sufficient, a tax surcharge will be due on the final corporate tax amount upon assessment.

Companies entitled to reduced rates are exempt from the tax increase during the first three accounting years following their incorporation.

5.3.3 Fairness tax

As from tax year 2014 (financial year 2013), large companies (i.e. non SMEs) are under certain conditions subject to a «Fairness tax» at a rate of 5,15%. The Fairness tax is only applicable if, for the taxable period in question, simultaneously: (i) dividends have been distributed by the company, and (part or all of) the taxable profit of said company has been offset against NID and/or carried forward tax losses.

The Fairness tax is a separate assessment which is, in principle, levied together with the ordinary corporate income tax and which is levied based on the Belgian corporate income tax return. The fairness tax is currently under investigation by the courts.

5.3.4 Tax credits

The following credits are allowed:

a. Movable withholding tax

As a general rule, Belgian companies paying dividends, interest, royalties, and/or certain rentals are required to withhold tax.

In cases where the recipient of this movable income is a Belgian company, the latter can offset this Belgian withholding tax against the corporate income tax and any excess is refundable.

Offsetting the Belgian withholding tax is subject to certain conditions/limitations.

b. Foreign tax credit

Unless a more advantageous provision can apply

based on a double tax treaty concluded by Belgium (so-called tax sparing provision), the Belgian beneficiary of foreign interest income or foreign royalty income is entitled to a foreign tax credit under Belgian tax law, provided that this income has effectively been subject to a tax charge in its source country.

This foreign tax credit is calculated on the net frontier income (i.e. after deduction of foreign withholding tax).

With regards to royalties, the foreign tax credit is equal to 15/85 of the net frontier amount. With regards to interest, it is determined depending on the tax levied abroad and in accordance with a specific formula. Any excess is not refundable.

5.4 How is international double taxation avoided?

5.4.1 Tax treaties

Double tax treaties aim at avoiding and eliminating double taxation by allocating the taxing rights on income arising from international transactions between the countries involved.

Belgium benefits from a wide and efficient tax treaty network. Most of these treaties are based on the OECD Model Double Taxation Convention on Income and on Capital.

5.4.2 EU Parent-Subsidiary Directive

In principle, dividends distributed by a Belgian tax resident company are subject to a Belgian withholding tax of 27%. Belgian domestic tax law provides for some exceptions.

Furthermore, according to the EU Parent-Subsidiary Directive as laid down in Belgian tax law, a Belgian withholding tax exemption applies in principle to dividends distributed by a Belgian company if the recipient company:

- is a Belgian or EU company;
- has a direct holding of at least 10% of the capital of the Belgian distributing company;
- maintains or commits to maintain this holding for an uninterrupted period of at least one year.

5.4.3 EU Interest and Royalty Directive

Interest and royalty payments made by a Belgian tax resident company are in principle subject to a Belgian domestic withholding tax of 27%. The notion of “royalty” is very broad and refers to income derived from letting, use or concession of movable goods.

Belgian domestic tax law provides for some exceptions (e.g. no withholding tax is due on interest income from Belgian registered bonds paid to non-residents, no withholding tax is due on royalty income received by a Belgian company).

Furthermore, according to the EU Interest and Royalty Directive as laid down in Belgian domestic tax law, a Belgian withholding tax exemption applies, in principle, to interests or royalties paid by a Belgian company if the recipient company:

- is a Belgian or EU company;
- has a direct or indirect holding of at least 25% of the capital of the Belgian company (this also works for payments between two companies which are held by the same parent company each for at least 25%)
- maintains or commits to maintain this holding for an uninterrupted period of at least one year.

5.4.4 Elimination of Dividend Withholding Taxes

Belgium abolished the dividend withholding tax for dividends paid to corporate shareholders in Treaty Countries.

The exemption is available provided that the beneficiary of the dividends meets the following conditions:

- it is a corporation that is resident in a treaty country;
- it has a holding of at least 10% in the Belgian company during an uninterrupted period of 1 year;
- it is normally subject to tax in its country of residence;
- it has a legal form that is similar to the legal forms enumerated in the EU Parent-Subsidiary Directive;
- Belgium and the country in which the recipient company is established have concluded a double tax treaty that provides for a sufficient exchange of information provision.

Currently, Belgium has tax treaties with more than 90 countries.

This tax measure provides for a dividend withholding tax exemption for all qualifying corporations, resident in a treaty country (having a sufficient exchange of information clause), regardless of the maximum dividend withholding tax rate provided in the tax treaty. Using Belgium as a holding location for investments in Europe may, therefore, enable to repatriate European profits exempt from dividend withholding taxes.



VI. VALUE ADDED TAX

6.1. What is VAT?

Value added tax (VAT - taxe sur la valeur ajoutée/ belasting over de toegevoegde waarde - TVA/ BTW) is a tax on goods and services which is borne 'possibly' by the final consumer and which is levied in successive stages, namely on each transaction in the process of production and distribution. In theory, this tax should not fall on business activities, and is achieved by the input/output system.

When a company buys goods or services, as a matter of principle, it pays VAT on the acquisition/importation

- input VAT (which is deductible). When the same company sells goods or services to another company or to a final consumer, it is, in principle, required to charge VAT
- output VAT (which is payable). The (deductible) input VAT can be offset against the (payable) output VAT and the balance has to be periodically paid to the VAT authorities. If the (deductible) input VAT amount exceeds the (payable) output VAT amount, the balance will as a matter of principle be refunded to the taxable person by the VAT authorities.

The end-consumer, coming at the end of the transaction chain, who does not generate output VAT, will not be able to deduct the input VAT and will as such bear the final VAT cost.

The operations subject to VAT are:

1. the supply of goods,
2. the supply of services,
3. the intra-Community acquisition of goods (goods coming from EU countries),
4. the importation of goods (goods coming from non-EU countries).

6.2. What transactions are exempt from VAT?

In principle, all transactions carried out in Belgium by a VAT taxable person are subject to Belgian VAT. Nevertheless, some transactions are exempt from VAT. The exemption from VAT can be with credit (or "zero-rated") (i.e. transactions that are exempt but still give a right to deduct input VAT) or without credit (i.e. transactions which give no right to deduct input VAT).

The operations subject to a VAT exemption with credit are:

- intra-Community supplies of goods,
- exports of goods,
- some supplies to embassies and international organisations,
- certain supplies of goods subject to a customs or VAT warehouse treatment.

The operations subject to a VAT exemption without credit are:

- insurance services,
- banking and financial services,
- rental of immovable property (exceptions exist),
- sales of property that is immovable by nature, except for sales of newly-constructed buildings. From a Belgian VAT point of view, a building is any construction that is fixed to the ground. A building remains new for VAT purposes until 31 December of the second year following the year of first use or occupation. Nevertheless, under certain circumstances (depending on the degree of renovation works carried out in it), an 'old' building can be considered as 'new' in certain instances,
- some transactions performed by non-profit-making associations.

In practice, many taxable persons performing transactions exempt from VAT without credit also carry out VAT-exempted activities with credit, which means that they have to set up systems and make calculations to identify and establish the amount of input VAT that they may deduct.

6.3. Who has to register for VAT in Belgium?

6.3.1. Obligation to register

According to the Belgian VAT legislation, a VAT taxable person is anyone who, in the performance of an economic activity, regularly and independently, on a principal or accessory basis, with or without a profit motive, carries out supplies of goods or services as referred to in the Belgian VAT Code, irrespective of the place where the economic activity is carried out.

Foreign taxable persons who, for VAT purposes, are established in Belgium are treated as Belgian-based companies. Foreign taxable persons who are not established in Belgium and who carry out transactions that are deemed to take place in Belgium and for which they are liable to pay VAT must register for VAT purposes.

As a summary, foreign taxable persons mainly carrying out the following activities are not obliged to register for VAT purposes in Belgium:

- (exclusively) transactions exempt from VAT without credit,
- local supplies of goods or services to VAT taxable persons established in Belgium and filing periodic VAT returns or
- local supplies of goods or services to VAT taxable persons not established in Belgium but registered for VAT purposes in Belgium through the appointment of an individual VAT representative.

On the other hand, there is in principle an obligation to register for VAT purposes for foreign companies not established in Belgium and performing:

- transactions with persons not referred to above,
- intra-Community acquisitions of goods,
- importations,
- intra-Community supplies of goods.

6.3.2. Procedures to register

Depending upon the actual place of establishment of the VAT taxable person, different VAT registration procedures will apply.

- A VAT taxable person established in Belgium will be required to register for VAT purposes in a local VAT office.
- A VAT taxable person who is not established in the EU and who is required to register for VAT purposes in Belgium will be required to appoint a fiscal representative. He will be registered with the Special Office for Foreign Entrepreneurs.
- A VAT taxable person who is not established in Belgium but in another EU Member State and who is required to register for VAT purposes in Belgium will be able to choose whether or not to appoint a fiscal representative. Registration without the appointment of a fiscal representative (direct VAT registration) demands fewer formalities than the appointment of a VAT representative and will not require the deposit of a bank guarantee. This person will also be registered with the Special Office for Foreign Entrepreneurs.

To the extent that he only carries out certain types of transactions in Belgium (e.g. importation of goods followed by a supply of the same goods or intra-Community acquisition of goods that are followed by an exportation of the same goods) and provided certain conditions are met, a VAT taxable person who is not established in Belgium can opt for a simplified VAT registration procedure through the appointment of a simplified VAT representative, who will be responsible for the necessary VAT compliance on behalf of the VAT taxable person in question.

6.4. What are the VAT rates applicable in Belgium?

The standard VAT rate of 21% applies to all supplies of goods and services not qualifying for another rate or exemption.

The reduced VAT rate of 12% applies to supplies of goods and services such as margarine, social housing and phytopharmaceutical products.

The reduced VAT rate of 6% applies to supplies of goods and services such as renovation works on immovable property (under strict conditions), mainly basic necessities such as food and pharmaceuticals, some medical equipment, etc.

6.5. What VAT is deductible?

A taxable person with a right of deduction may deduct input VAT he has incurred from the output VAT he is liable to pay to the Belgian State in so far as the input VAT relates to costs incurred for the purposes of carrying out:

1. VATable transactions;
2. taxable transactions exempt from VAT with credit (see point 6.2);
3. taxable transactions that are located, for VAT purposes, outside Belgium and that would qualify for a deduction of input VAT had they been carried out in Belgium;
4. certain taxable transactions (listed in section 44(3)(4°) to (10°) of the Belgian VAT Code), which are exempt from VAT without credit (see point 2), provided these transactions are carried out in favour of a recipient established outside the EU or are directly linked to goods that will be exported to a country outside the EU; and
5. agency services in respect of the transactions mentioned in point 4.

In general, input VAT on goods and services not used for the purposes mentioned above is not deductible. Furthermore, for certain types of expenditure, there are general limitations to the right to deduct input VAT, as a consequence of which VAT incurred on these types of expenses constitutes a cost for the VAT taxable person in question:

• No VAT deduction:

- VAT incurred on intra-Community acquisitions or supplies of spirits other than those intended for resale or to be provided as part of a supply of services;
- VAT incurred on intra-Community acquisitions or supplies of manufactured tobacco;
- VAT incurred on costs of accommodation, food and beverages where they are intended for immediate consumption, unless these costs are incurred by:
 - a. employees of the VAT taxable person on whose behalf they are incurred in the course of supplying goods or services away from the business premises; or
 - b. other businesses that in turn supply the same services/goods for consideration
- VAT incurred on reception costs.

• 50% VAT deduction:

VAT incurred on the importation, intra-Community acquisition or supply of cars designed for passenger transport or for passenger and goods transport combined, unless the vehicles:

- are intended to be sold or rented out by a VAT taxable person specialising in such activities, or
- are intended to be used for remunerated passenger transport (taxis, etc.).

Furthermore, VAT incurred on supplies of goods or services relating to these vehicles is subject to the same limitations on the right to deduct input VAT.

6.6. Refund of Belgian VAT to non-registered foreign taxable persons

Businesses that are not established in Belgium and that are not required to register for VAT purposes in Belgium can, as a matter of principle, recover input VAT paid to their suppliers by means of special refund procedures.

6.7. What formalities have to be completed for Belgian VAT purposes?

6.7.1. Commencement, change or cessation of trading activities

Each VAT taxable person should, before starting VATable activities in Belgium, file a special statement of commencement of trading activities, a form 604A, with the Central Database for Undertakings, which is a single contact office according to Belgian law.

In the case of a change to his business or activities, a VAT taxable person has to file a special form, 604B. Once no further VAT taxable activities are to be carried out for which the VAT taxable person is liable for Belgian VAT, a declaration of cessation of trading activities (form 604C) should be filed with the Belgian VAT authorities.

6.7.2. VAT returns

In principle, a monthly VAT return has to be filed. However, if the annual turnover realised in Belgium does not exceed EUR 1.000,000, quarterly VAT returns can be filed.

Periodic VAT returns have to be filed no later than the 20th of the month following the month or quarter concerned. The balance of VAT due must be paid by that date as well.

Any refundable amount is carried forward to the next period. Yearly or quarterly repayments are possible on demand if certain conditions are met and certain thresholds have been reached. Monthly repayments are also possible for taxable persons who file monthly returns and who perform significant VAT-exempt operations (with credit).

6.7.3. Invoicing

According to the Belgian VAT Code, invoices issued by a VAT taxable person must contain certain mandatory particulars. In the case of non-compliant invoices,



fines can be imposed in the hands of the supplier and the deduction of input VAT may be refused in the hands of the recipient. Subject to certain conditions, electronic invoicing is allowed in Belgium.

6.7.4. Quarterly listing of intra-Community supplies

To the extent it is engaged in such transactions, each VAT registered entity has to submit quarterly summary statements indicating exempt intra-Community supplies of goods and deemed intra-Community supplies of goods.

6.7.5. Annual sales listing

Each year, a summary statement must be drawn up of supplies made to customers registered for VAT in Belgium. This listing has to be filed by 31 March of the year following the calendar year concerned.

6.7.6. Intrastat returns (not for VAT but for statistical purposes)

Intrastat measures movements of goods between Member States, recording movements whenever goods enter the Belgian territory from other EU Member States or leave it for other EU Member States.

Intrastat returns in principle have to be filed on a monthly basis and are due on the 20th of the month following the calendar month to which they relate.

6.7.7. Retention period for books and records

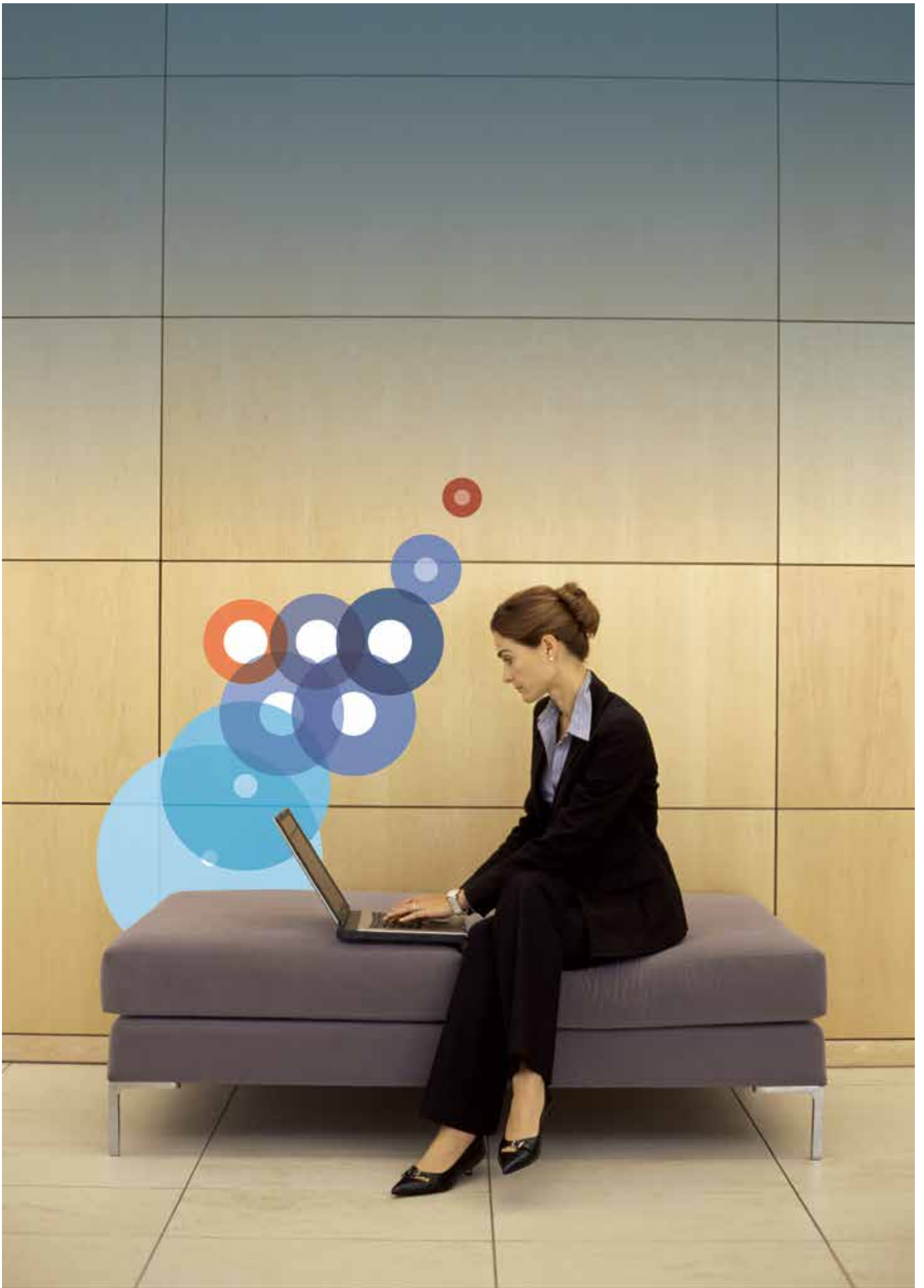
As a general rule, the books and records to be kept or drawn up under the Belgian VAT legislation must be retained for a period of seven years.

Moreover, a retention period of 15 years is applicable to books and documents related to immovable goods eligible for the 15-year review period. Electronic archiving is allowed under certain conditions.

6.8. VAT grouping

VAT grouping is possible in Belgium for related companies established in Belgium.

The main advantages for entering into a VAT group are a reduction of the VAT cash flow, the reduction of risk of incorrect VAT treatment and possible VAT saving, e.g. in the finance and real estate sector.



VII. TAXATION - PERSONAL

7.1 Who is subject to Belgian personal income tax?

Anybody taking up employment in Belgium, or living in Belgium will in general become liable to income tax under Belgian law.

Belgium taxes its residents on their worldwide income irrespective of their nationality. Residents of Belgium are those who have established their domicile or their economic base in Belgium.

Non-residents of Belgium are subject to income tax on their Belgian-source income only (notably professional income earned in Belgium, investment income, e.g. dividends, sourced in Belgium and real estate property income located in Belgium).

7.2. How is the taxable base determined?

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

In determining the tax base, compulsory social security contributions paid either in Belgium or abroad are fully tax-deductible. The professional expenses incurred during the taxable period in order to maintain or increase the taxpayer's income are also tax deductible. These professional expenses can be claimed either on an actual basis through the production of supporting documents or on a lump-sum basis (max EUR 4.240,00 per year obtained on an annual taxable salary of EUR 34.590,00; income year 2016).

Personal tax is calculated on that base after allowing for part of that base to be exempt from tax

by applying a number of deductions related among other criteria to the marital status and the number of dependent family members.

Taxation on husband and wife's earnings is calculated separately. As a special concession, where only one partner earns income, a notional transfer of 30% of his/her earnings, up to a ceiling of EUR 10.290,00 (income year 2016) may be allocated to the other partner so that each is entitled to a basic minimum reduction. Although couples are taxed separately on earnings, assessments continue to be issued in joint names.

However, no personal tax exemptions, and notional transfer of earnings to spouse will be granted to non-resident taxpayers if they do not earn at least 75% of their income in Belgium, unless they are resident taxpayers of France, Luxembourg or the Netherlands, in which case they can benefit from those exemptions at the rate of the portion of their worldwide income which is from Belgian source.

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

7.3. How is the personal tax calculated?

7.3.1 Employment income

Tax brackets for income year 2016 applicable to net taxable income after deduction of business expenses (see. table below)

Belgian tax brackets EUR						
taxable income		tax bracket	%	tax due	tax on the bracket	total
0	10.860,00	10.860,00	25%	-	2.715,00	2.715,00
10.860,00	12.470,00	1.610,00	30%	2.715,00	483,00	3.198,00
12.470,00	20.780,00	8.310,00	40%	3.198,00	3.324,00	6.522,00
20.780,00	38.080,00	17.300,00	45%	6.522,00	7.785,00	14.307,00
>	38.080,00		50%	14.307,00		

7.3.2 Investment income

Investment income from stocks, bonds, deposits etc. is taxable separately from the employment income. Such investment income is not taken into account to determine the tax rate to the employment income.

- **Interests**

Interests received from Belgian source are, in principle, subject to a flat-rate tax of 27% usually withheld at source, with no further obligation to report it on a tax return form. Interests of saving bank accounts benefit from a favorable flat-rate of 15% usually withheld at source. The first EUR 1.880,00 of saving bank account interest is exempt from the 15% withholding tax and is furthermore exempt from inclusion in the tax return

- **Dividends**

Dividends received from Belgian source are, in principle, subject to a flat-rate tax of 27% usually withheld at source with no further obligation to report it on a tax return form.

7.3.3. Sixth State Reform

In 2014, the Belgian regions became more autonomous in tax matters. As from income year 2014, the regions are allocated a portion (called “*additionnels régionaux*”) of the personal tax that has been calculated and they can apply tax reductions, tax increases or tax decreases to that portion. Then, both the federal portion and the regional portion are summed up to form the total income tax payable.

On top of that amount, residents also pay municipal and provincial taxes at rates that vary between 0% and 9,5% of the total income tax payable. Non-residents have to pay a similar additional tax at a flat rate of 7% of the total income tax payable.

Some of the more popular regional tax reductions granted by the Wallonia region are:

- Reduction for “*titres-services*” (housing services), which consists of a reduction of 10% of up to EUR 1.350,00 per year paid to buy “*titres-services*”;
- Reduction linked to own and only house. Further to the 6th State tax Reform, Wallonia has introduced, for mortgage loans contracted as

from 1 January 2016, a so-called “*Chèque-habitat*”, which consists of a reduction of up to EUR 1.520,00 per year (increased by EUR 125,00 per dependent children) for taxpayers who have contracted a mortgage loan to buy their own and only house and who do not earn more than an taxable net income of EUR 81.000 per year.

7.4. Special provisions of the Belgian tax law

7.4.1. Special tax regime for expatriates

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

- **Conditions to apply**

In order to qualify for the special tax status, executives must be foreign nationals and exclusively carry out duties that require them to have special knowledge and responsibilities. Foreign researchers and other specialised foreign staff will generally qualify for the special tax status as well.

In order to be considered for the special tax status, the expatriate also has to comply with the following conditions:

- employment in Belgium must be within a qualifying company, i.e. a Belgian place of business (e.g. representation office, branch) or a Belgian entity belonging to an international group of companies, a control or coordination office for these companies that renders services within the international group, or a scientific laboratory or research centre belonging to an international group of companies;
- employment in Belgium must be of a temporary nature;
- expatriates must qualify as non-residents of Belgium, i.e. neither their residence nor the focus of their economic and personal interests must not be situated in Belgium.



Whether or not an expatriate has his/her residence or the centre of his/her economic or personal interests in Belgium will necessarily be determined on the basis of a whole set of accurate and consistent information that is relevant enough to show, in particular, the temporary nature of the employment in Belgium. The various factors that are decisive in assessing the temporary character of the employment in Belgium may be taken from the expatriate's private life or may arise from the nature of the duties carried out.

An application form has to be filed with the Belgian tax authorities within 6 months starting from the first day of the month following that in which the employment or assignment in Belgium starts.

- **Benefits granted**

The special expatriate tax status offers two important tax advantages to foreign executives:

- reimbursements made by the employer to cover additional expenses incurred as a direct result of the assignment or employment in Belgium are treated as costs proper to the employer, which are, within certain limits (max. EUR 11.250,00 or 29.750,00), non-taxable for the expatriate (the "tax-free expatriation allowances");
- the executive benefits from an exemption for the part of his/her compensation that relates to business duties carried out abroad (the "travel exclusion").

Both the tax-free expatriation allowances and the portion of salary relating to business services rendered abroad are taken out of the expatriate's taxable income from employment. The net taxable employment income after this deduction is then taxed in the same way as the taxable income of a resident of Belgium, i.e. applying the same tax rates and exemptions (unless the non-resident derives less than 75% of his income out of Belgium, see 7.2), and is likewise added to the other income from Belgian sources.

7.4.2. Company cars

The private use of a company car results in a taxable benefit for the individual. The private use includes all use other than pure business use: during weekends and holidays and commuting between home and the fixed place of work. The benefit in kind is determined by Royal Decree on a lump sum basis. It equals the catalog value of the car multiplied by

a coefficient which depends on the CO2 emissions, the type of fuel and the age of the car. There is a legal minimum taxable benefit of EUR 1.260,00 per year (income year 2016)

If the employee contributes to the cost of the company car, such a contribution can be deducted from the amount of taxable benefit in kind.

No employee social security contributions are due on the benefit in kind.

7.4.3 PC "plan"

- **PC put at disposal by the employer**

When PCs put at disposal by the employer are used for private purposes, there is a lump-sum valuation of the benefit in kind of EUR 180,00 per year for PC and accessories and of EUR 60,00 per year for an Internet connection provided by the employer.

- **Implementation of a private PC purchase program**

Up to EUR 840,00 (income year 2016), the employer's contribution to private PC purchases may be tax-exempt for the beneficiary (employee) and deductible for the employer provided certain conditions are met. The Private PC purchase plan can provide in a range of desktop computers, portable computers, printers, etc. from which the employee can choose.

Moreover, if the contribution of the employer in the employee's PC purchase does not exceed 60% (excluding VAT) of the purchase price and EUR 1.910,00 (for income year 2015 - amount for 2016 is not yet known) per year (PC, accessories, internet connection and business software), there are no social security contributions due.

7.4.4 Stock options plan

- **Principles**

Stock options offered as of 10 January 2003 are taxed to the beneficiary on the 60th day following the offer of the options provided the beneficiary has accepted the stock option offer in writing not later than the 60th day following the offer. No further tax is in principle due at exercise or later on when the shares are subsequently sold.

In case the beneficiary would not accept the stock option offer in writing prior to the expiration of the 60-day deadline, he would be deemed, from a tax point of view, as having refused the stock options. These stock options are, according to the Belgian tax authorities, taxable at exercise.

- **Taxable amount**

For publicly traded options, the taxable amount is the closing market price on the stock exchange of the last trading day preceding the day of offer.

For non-publicly traded options, the taxable income of stock options accepted in writing no later than the 60th day following the offer is the sum of:

- the “Taxable Time Value”: 18% of the stock fair market value (at the time of the offer) for options that have a life of 5 years maximum. For options that have a life of more than 5 years, the value will be increased by 1% for each year or part of a year in addition to the 5 years. Provided certain conditions are met, the percentages of 18% and 1% may be reduced by half so as to be respectively 9% and 0.5%;
- the “Taxable Intrinsic Value”: the positive difference between the fair market value of the stock at offer date and the exercise price (“discount”), after deduction of possibly applicable Belgian employee’s social security contributions.

For the purpose of applying this valuation method, the fair market value of the stock listed on a Stock Exchange is as the offering entity chooses:

- the last closing rate of the share on the Stock Exchange prior to the offer date, or
- the average closing rate of the stock on the Stock Exchange over the last 30 days prior to the offer date.

- **Social security**

For stock options accepted in writing no later than the 60th day following the offer, social security contributions for salaried persons are only due on the discount or on any certain guaranteed benefit under the option agreement. There is therefore no social security contribution due on the “taxable time value” of this option or upon the subsequent exercise of this option or sale of the shares except if a certain guaranteed benefit would then be granted.

7.4.5 Stock purchase plan

The “Purchase Date” of the shares is the taxable event.

The taxable stock purchase plan income is measured as the excess of the fair market value of the shares at the “Purchase Date” over the purchase price actually paid (the discount). The discount will qualify as taxable pay subject to income tax at progressive rates.

For shares that are rated on a stock exchange, and provided that the shares are issued by a company that employs the participant or by a company of which the employer is a direct or indirect subsidiary, the fair market value of the shares may be deemed to be 83,33% (“100/120th” tax rule) of the share’s market value (price) at the “Purchase Date” provided the parties agree by common consent to make the shares non-disposable for a period of at least two years. A discount of 16,67% of the fair market value of the shares is therefore exempted from tax and from social security contributions.

7.4.6 Employee profit participation scheme

An employee profit participation scheme is a plan, complying with conditions laid down in the Belgian legislation, under which the workforce is eligible to be allotted a portion of the company’s (group of companies) profits either in cash (profit sharing) or in company’s stocks (parent company’s stocks) at a favourable tax and social security treatment.

The profit sharing or equity sharing is taxable at the time it is allotted.

- The profit sharing (in cash) is subject to a flat 13,07% solidarity contribution (13,07% of the gross profit available). The profit sharing after deduction of the aforesaid solidarity contribution is then subject to a flat withholding tax of 25%. These taxes are final.
- Equity sharing (sharing in stocks) is subject to a flat 15% withholding tax provided that the plan regulations provide that the stocks may not be disposed of for a minimum of 2 years and a maximum of 5 years. The 15% tax is the final tax. No solidarity contribution is due.

7.5 What are the required tax formalities?

Beside possible formalities regarding withholding tax which are to be complied with by the employer, Belgian taxpayers are under the obligation to report their income in an individual income tax return.

This individual tax return must in principle be lodged by the end of June of the year following the income year, unless the tax return is submitted by a proxyholder, in which case the deadline is set at the end of October. As for non-resident taxpayers, they have until November to file their tax return. Spouses must file a joint tax return (an exception is made for the year of marriage or divorce).

7.6 Is there any wealth tax in Belgium?

There is no wealth tax, as such, in Belgium. However, an indirect wealth tax exists in the form of a 12,5% transfer tax («registration duties») on the sale or transfer of real estate property (buildings, land) located in the Wallonia Region (other than newly-constructed houses and other buildings on which VAT at 21% would be applied). Tax is computed on the selling price, or the assessed market value if higher, and is invariably paid by the purchaser

There is also a local property tax (précompte immobilier – onroerende voorheffing) assessed on the ‘cadastral income’, i.e., on the deemed rental value attributed by the authorities to the property. Property tax is levied at a rate which varies according to the municipality and to the location of the property. Rates generally vary between 20% and 50% of ‘cadastral income’

VIII. CUSTOMS

8.1 What is customs?

Amongst all the areas that Customs covers, we would like to highlight the two following ones. The customs legislation relates to:

- I. **the taxation of international trade by collecting import and export duties on goods;**
- II. **and the protection of borders and the security of citizens.**

The implementation of a European customs union in 1992 considerably facilitates trade in the EU and creates a harmonised legal framework at the EU borders (common customs tariff, customs valuation rules, and common commercial policies).

Since global supply chains are getting more and more complex, customs & international trade play an even bigger key role in business strategy. In this respect, customs covers a wide range of decisive areas:

- protection of national border;
- collection of customs duties, import VAT and other indirect taxes;
- protection of industry against counterfeiting;
- enforcement of EU commercial policies;
- excise;
- ...

Customs and international trade has therefore a major impact on each step of the supply chain.

8.2. Export goods out of the EU

8.2.1. What is the difference between export and intracommunity supply?

Exportation entails that goods are brought to a destination outside the European Union, whereas an intracommunity supply envisages the supply of goods from a seller located in an EU Member State to a buyer located in another Member State in the European Union.

8.2.2. Export requirements

Operators who intend to export goods for the first time need to request an EORI number (Economic Operators Registration and Identification num-

ber) for identification purposes. An EORI number is being used, for example, to communicate with the competent customs authorities. Kindly note that an operator which is not established in the EU must request an EORI number in the Member State in which it intends to lodge its first export declaration.

In most cases, the exporter is the owner of the goods at the time of export in the EU. If the owner of the goods is not established in the EU, the contracting party established in the EU must, according to the prevailing EU legislation, act as exporter. Kindly note that in practice, this rule is not being strictly adhered to in the various EU Member States. For instance, in Belgium, a company not being established in the EU will be able to act as exporter, provided that the company in question has a correct EORI and VAT number (in most cases by means of fiscal representation).

An exporter needs to be compliant with the administrative requirements related to the goods being exported, which entails in particular that the exporter has to issue a correct and complete export document (i.e. the Single Administrative Document). The exporter must lodge an electronic customs declaration (except in certain circumstances where a paper-based or oral declaration can be used), in which the data needed for the safety and security risk analysis is included as well as the correct customs classification, value and origin of the products.

8.2.3. Export procedure

In principle, the exporter is responsible for lodging the export declaration. In case the goods are re-exported after having been placed under particular customs procedures (e.g., bonded warehouse regime, inward processing relief), the holder of the latter (i.e., the person authorised to use that procedure) is responsible for lodging the export declaration. Any of these persons may use a customs representative (e.g. customs broker) for performing these obligations.

The basic rule is that an export declaration must be lodged at the customs office competent for the region where the exporter is established (so called "customs office of export"). Under the normal procedure, all goods must be presented at the customs office of export for verification. Nevertheless, please note that the economic operators

could also make use of simplified procedures by which the physical presentation of goods does not take place at the customs office, but could be done prior to the export, at the company's premises. The customs office of exit is responsible for the region where the goods physically cross the EU borders and have the competence to verify whether the goods presented correspond to the data provided by the customs office of export.

If the export procedure is being followed properly, the customs office of export receives an exit notification from the customs office of exit confirming the goods indicated on the export document physically crossed the EU borders and were thus correctly exported. The exporter can use this confirmation as a valid evidence that goods could be VAT exempted for export purposes.

8.2.4. Completing the export declaration

As exporter it is of paramount importance to make sure all three customs pillars are correctly covered on the export declaration, since the importer in the country of destination will rely on the information

provided by the exporter to declare the goods concerned.

- **Customs classification**

All products that are imported or exported have to be classified on the basis of the rules laid down in the Combined Nomenclature (CN) and TARIC (Integrated Tariff of the European Union), which is an EU system that provides in a 10-digits code for every product (i.e. CN-code) in the EU.

A correct customs classification is vital, since it serves as a basis to determine the applicable customs tariff upon importation and is moreover directly linked to the preferential origin rule set.

- **Customs valuation**

The customs value is the taxable basis for customs purposes. The amount of import duties due will be determined by multiplying the correct customs value with the applicable customs tariff.

The customs legal framework provides six different valuation methods. The most commonly



used method to determine the customs value upon importation in the EU is the 'transaction value' (i.e. Article 29 of the Community Customs Code or article 70 of the Union Customs Code). These valuation methods are harmonised on a global level by means of Article VII of the General Agreement on Tariffs and Trade (GATT) on valuation agreement.

For export, it is mandatory to complete the customs value for statistical purposes (e.g. to analyse the value of the goods being exported out of a particular country during a particular period), since the EU currently did not apply any export duties. Kindly note that the customs value declared for customs purposes is used as a taxable basis for VAT purposes. Furthermore, the supply of goods to a counterpart located outside the EU territory could be, in most cases, be VAT exempted on condition that the exporter can prove the goods actually left the EU territory.

- **Customs origin**

The customs origin of a good is considered as the economic nationality of a product and is used (together with the customs classification and customs valuation) to determine the correct amount of customs duties to be paid upon importation.

Based on concluded Free Trade Agreements (FTA's), a preferential import duty rate may apply to products in the country of importation in case the goods meet the applicable criteria laid down in the FTA at hand. These criteria are stipulated in particular protocols of the FTA and are classification code specific. This underlines the key role a correct customs classification plays in the global supply chain.

Preferential origin has a direct impact on the supply chain and can easily open doors of new markets for EU exporters. In this respect it is of prime importance to closely monitor the applicable rules for each individual trade flow.

The exporter must prove the preferential origin of his products by obtaining a certificate of origin (EUR.1 or EUR-MED) which is being issued by the competent central customs authorities in Belgium. Depending on the number of exportations carried out, the EU economic operator may choose to apply for an approved exporter authorisation entitling the company to certify the preferential origin of the concerned goods by adding a legal notification on the corresponding invoice or any other commercial document accompanying the export

document (depending on the applicable FTA). Such a facilitation can lead to significant savings for the exporter given the administrative costs and time involved for issuing EUR.1 / EUR-MED certificates.

8.3. Special rules and facilitation for export

8.3.1. AEO: a key certification for trade facilitation

The AEO program has been implemented by the EU in the aftermath of the 9/11 terrorist attacks. Purpose of the program was to ensure the security and safety of economic operators' supply chain when performing cross-border operations. In this respect, the AEO certification plays a key role for companies involved in international trade, as certified traders are viewed as reliable economic operators by the customs authorities.

Besides, such certification entitles its holders to benefit from certain privileges due to the partnership they develop with the various customs authorities.

Fulfilling AEO criteria is therefore a pre-requisite when applying for customs simplifications under the Union Customs Code (the new customs code which will be highlighted under title 7.4.) (e.g., entry into the record, simplified declaration, reduction of guarantees...) and specific procedures for exportation, such as, centralised clearance, which allows economic operators to declare their cross-border operations and exportations from different locations to a one unique customs office.

Several World Customs Organisation members have developed partnerships by signing Mutual Recognition Agreements (MRA's) regarding their customs certifications (i.e., the EU has signed such an MRA with Norway, Switzerland, Japan, USA and China ...).

Mutual Recognition of the AEO certification is a concept whereby an action or decision taken or authorised by one customs administration in view of AEO is recognised and accepted by the partner country's customs administration.

MRAs help operators to avoid disruption in their supply chains in case, for instance, goods are blocked in the country to where the goods have been exported out of the EU.

8.3.2. Customs simplifications and specific regimes

Businesses and traders operating internationally consider their supply chain at a global scale. Using customs procedures and simplifications can give rise to concrete and immediate cost savings and improve cash flow position of the company. Below we will shortly highlight some of them:

- Outward processing relief: allowing economic operators to temporarily export goods for processing purposes and then re-import them into the EU. Only the generated added value will be considered as taxable basis for customs purposes.
- Inward processing relief: allowing companies to re-export goods imported into the EU for processing purposes under duty suspension;
- Bonded warehouse regime: allowing operators to store goods in the EU - without a time limit - under suspension of customs duties and VAT. The import duties and import VAT are only due if the goods are being imported afterwards.

8.4. Export control

The role of export control has dramatically increased since 11 September 2001. The objective of the latter is to prevent the risks of the proliferation of arms, weapons and nuclear technologies all over the globe.

The United Nations, the European Union as well as the United States government took numerous decisions/regulations in line with international obligations. In the European Union, export control regulation is aiming at controlling export of goods, software or technologies, potentially designed for military purposes or/and nuclear proliferation. Products and technologies may be regarded as dual-use items (i.e. goods, software or technologies which can be used for both civilian and military application) for which the national authorities may prohibit export or require an export licence. Such requirement may be extended, in certain circumstances, to brokerage and transit.

Besides, transactions to countries or organisations (e.g., Sudan, Syria, Russia, North Korea...) under economic sanctions can also be restricted or prohibited as it involves listed entities or individuals or activities under trade embargoes.

Companies should therefore not underestimate the importance of compliance actions. In this respect, companies should pay specific attention to the management of customs brokers' relationships both in the EU and outside the EU. In order to mitigate and monitor the risks, a company should keep closely track of its own transactions and of these of its customs broker.

8.5. The Union Customs Code

As from the 1st of May 2016 the Union Customs Code will enter into force in all EU Member States.

The UCC will bring along substantial legislative changes regarding customs valuation (including the abolishment of first sale for export), the revision of certain customs procedures (e.g. removal of Bonded Warehouse type D facilitation, no obligation of export under IPR suspension regime) and fully paperless customs compliance. Considering the impact the changes will have, the EU authorities provided a transition period which will last up till 2020 for some of the new practicalities to be implemented. Therefore the implementation of the UCC will not be experienced as a big bang, since companies will be given sufficient time to adapt and to align them to the new legal framework.

One of the key discussion points in view of the entry into force of the UCC is the definition of exporter, since as from the 1st of May 2016 non-EU companies will no longer be allowed to act as exporter. This new provision is still under discussion and will be further illustrated in the UCC guidelines which will be published shortly by the European Commission. But still, the interpretation of the new definition will certainly remain food for thought...

IX. INTELLECTUAL PROPERTY AND DATA PROTECTION

You have created an innovative product which you cannot wait to put on the market. But how to protect the time, effort & means you invested in developing the product and in making it ready for market launch? How to make sure that you are the only one that can market it as such and maximise your return?

We now enter into the field of intellectual property and the rights conferred by law on intellectual property.

According to the World International Property Organization (WIPO) 'intellectual property' or 'IP' refers to the creations of the mind i.e. inventions, literary and artistic works, designs, models, symbols and names used in a commercial environment'.

For certain types of intellectual property, legislators have set-up specific legal frameworks granting specific intellectual property rights to the developer, owner and/or beneficiary of the creation. These 'intellectual property rights' or 'IPR' grant them certain monopolies to control the use of the creation by other parties and thus form a key asset of any business.

While all intellectual property rights aim to protect a different aspect of a creation, they have certain basic features in common.

To not broaden the complexity of our contribution,

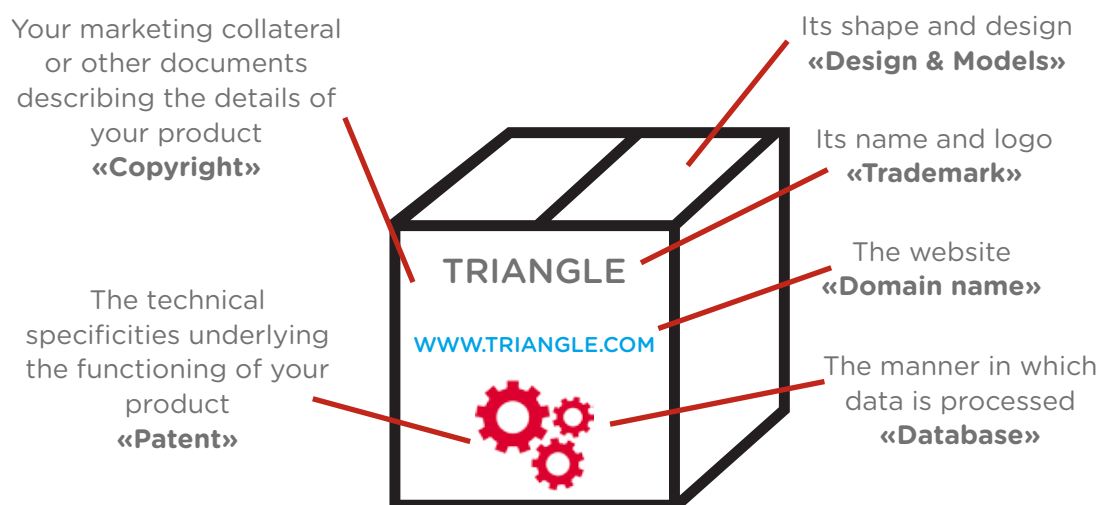
we will focus on the most relevant intellectual property rights for businesses. Let's say you have created an innovative product you wish to call "Triangle". With the existing intellectual property rights you could protect the following aspects of your creation:

- Intangible by nature
- Protection subject to strict legal conditions
- Scope of protection is territory-based
- Right's holders benefit from exclusive rights on the use of the creation
- Rights are susceptible of transfer and licensing
- Right's holders benefit from specific enforcement means to prohibit 3rd parties from using creations without their approval

9.1 Trademarks

A trademark is a company's calling card and will differentiate the company's services and goods from those of other undertaking.

Any sign, or any combination thereof, capable to distinguish the goods or services of one undertaking from those of other undertakings may constitute a trademark: i.e. words (including personal names), letters, numerals, sounds, perfumes, holograms, figurative elements, combinations of colours, and any combination of those signs.



Trademark protection is only granted when certain criteria are fulfilled:

Firstly, the sign must be graphically representable e.g. audio visible signs can be distinguished by the use of a music bar. More difficult will it be to represent a perfume brand in a graphical way.

Secondly, the sign must serve to distinguish the goods and service of one undertaking from the goods and services of another undertaking. This criteria entails an objective and subjective element.

The subjective element refers to the fact that the user of the sign needs to have the intention to use the sign to distinguish his goods and service from those of another undertaking. The objective element requires that the sign must be suitable for distinctive purposes and the public must comprehend the sign as a trade mark. However, it should be noted that the distinctive power of a trademark is never constant. A trademark can lose his distinctive character e.g. the trademark 'aspirin' has lost his distinctive character as the word is used in general to address painkillers. Trademarks that are too generic or too descriptive can generally not serve as a trade mark for the products or services they refer to. Therefore the use of a trade mark such as 'Apple' for computers, smartphones etc, is seen as distinctive as the products have no connotation with apple fruit.

The owner of a registered trademark has the exclusive right to prevent all third parties from using your sign or an identical one without your consent. In addition, it gives you the possibility to take action against those who use your trademark without your approval to take advantage of your brand's value and reputation to market their product services.⁵

The following remarks should be taken into account:

- A trademark protection can be renewed infinitely but is geographically limited. When you as a company files a trade mark in on given territory, this does not automatically provides you a worldwide protection for the trade mark for all goods and services. The protection of trademarks is territorially limited. However, you can choose to have your trademark registered in more jurisdictions. If you want to have protection for your trademark in Belgium you can rely on the Benelux trademark that grants your company a monopoly for using the trademark within Belgium, the Netherlands and Luxembourg
- Trademark protection is in principle limited to the category of goods and services for which the application is filed in.
- Trademark protection is only granted when the user itself or a licensee exploits the right. Otherwise, he runs the risk of losing either the exclusivity or the right itself.

	BENELUX trademark	COMMUNITY trademark
Where ?	Belgian Office for Intellectual Property (OPRI) Benelux Office for Intellectual Property Rights (BOIP)	Benelux Office for Intellectual Property Rights (BOIP) Belgian Office for Intellectual Property (OPRI) The Office for Harmonisation in the Internal Market (OHIM) in Alicante
How long protected ?	renewable period of 10 years	renewable period of 10 years

⁵ Article 16(1) trips

- **Domaine names**

Besides the protection of a sign by a trademark, it might be interesting for a company to protect the domain name.

A domain name ensures the accessibility of the company, products and services via the internet. Different top level domains (TLD) can be requested

e.g. '.be', '.vlaanderen', '.brussel'. Even your brand or trade name can be requested.

By registering a TLD, a spot on the internet is reserved as long as you pay for it. As result, this means you are not an owner of the domain name.

	Domain name
Where ?	specific registration offices depending on the TLD. <ul style="list-style-type: none"> • Registry • Registerar • '.be' TLD has to be registers at an association that is non-profit
How long protected ?	protection can be renewed every year after payment of the fees

9.2 Patents

A patent is a document given by a competent authority, which describes an invention and creates a legal situation in which the patented invention can normally only be exploited e.g. manufactured, sold, imported, etc. with the authorization of the owner of the patent. In return for the protection, the technical information, essential for the invention, needs to be disclosed to the public⁵

Companies do considerable investments (financial investments, research, etc.) to make an invention. Therefore the patent protection will grant you a temporary and exclusive right to operate an invention (including the right to grant licenses to others to operate such invention).

Patents can be granted for inventions, products or processes in all fields of technology, when they fulfil the following criteria: (i) there is an invention (ii) which is new, (iii) involves an inventive step, (iv) capable of industrial application and is (v) licit.

An invention needs to be distinguished from a discovery which refers to the recognitions or discovery of a phenomena of the material universe not yet seen before. Whereas an invention means that something is created that did not exist before.

In addition to that, a patent cannot be granted for e.g. discoveries, scientific theories and mathematic

methods, aesthetic creations, plans, principles and methods in the exercise of intellectual activity, playing games or in the field of economic activities and computer programs and a surgical or diagnostic.

Patents can be protected all over the world by fulfilling an administrative procedure. The protection will grant you a limited, temporary territorial exclusive right to exploit the patent as described in the patent application on a commercial basis. On the other hand you are obliged to make the invention public so other inventors and competitors can study your invention.

When applied for the patent, the described patent will first be published before an (possible) exclusive right is granted. Therefore, you will have to considerably decide if you want to protect your invention by a patent or know-how.

You can opt for a Belgian patent or a patent in other countries by a European and/or international patent. The European and international patents differ from the European trademark as it more a mere bundle of national patents. In 2016, 2017⁶ the European Unitary patent is expected to become into force. By the use of this patent, protection will be granted in the 25 participating states.

⁵ WIPO Intellectual Property handbook: Policy, Law and Use, WIPO Publication NO. 489 (E) , 2004, p. 17- http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf - last consulted November 2015.

⁶ An exact date cannot be given as it is waiting on 13 member states to ratify the agreement. Further update can be followed on http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf.

	Belgian Patent	European Patent	International Patent
Where ?	Belgian Intellectual Property Office in Brussels (OPRI)	European Patent Office (EPO) in Munich or The Hague. Belgian Intellectual Property Office in Brussels (OPRI)	National or Regional Patent Officer or World Intellectual Property Organisation (WIPO)
How long protected ?	maximum 20 years	maximum 20 years in Belgium	

9.3 Copyright & neighbouring rights

Copyright arises automatically when you create a literary or artistic work, whatever the mode or form of its expression.

Copyright arises from the simple exteriorising of a creation. The creation will be considered as 'original' when it is the result of an intellectual effort and reflects the personality of the author.

The protection of copyright deals with the form through which the creator has expressed his ideas. Copyright protects e.g. the choice of words, colours, music notes, forms, etc. As the form of expression is protected, a certain materialisation is required. This can be a physical object e.g. books, pamphlets and other writings, building plans/ architecture, (scientific) drawings, technical notes, operating instructions, wrappings of appliances, publicity slogans, scientific articles, geographic maps, layout, industrial designs, design furniture, cinematographic and audio-visual works, translations and adaptations, databases, computer software, choreography, etc. However, a physical object is not mandatory. A song which is performed on stage but is not written down can be protected as well.

As copyright arises from the simple exteriorising it might be useful to use the copyright symbol, [©] or [Copyright © 2015 [COPYRIGHT OWNER'S NAME]. All Rights Reserved.] to indicate to e.g.

competitors, readers that you own the copyright on that specific creation. The use of this symbol

is not mandatory and is a reminder for others that you are the copyright owner. However, this does not give you a proof that you are the creator of the work. Therefore you can make use of the i-depot in Belgium. The i- DEPOT enables its holder, to prove the ownership and the date on which the piece of work in question was created.

Copyright grants you exclusive rights that, depending on the jurisdiction are limited in time. These right can be divided into economic and moral rights:

- Economic rights include (i) the right to reproduce the creation and (ii) the right to communicate the piece of work to the public. Such economic rights can be transferred, in whole or in part, in accordance to the provisions of Belgian copyright which can be found in title V of book XI of the Belgian Code of Economic Law.
- Moral rights, which include (i) the right of first publication (i.e. the right to bring a creation to the public's knowledge), (ii) the right of paternity (i.e. the right to claim or refuse authorship) and (iii) the right of integrity (i.e. the right to receive respect and to object to any modification of the creation).

	Copyright protection
How long protected ?	depends on the jurisdiction: In Belgium, protection is granted during the life of the author and 70 years after his dead



9.4 Industrial designs & models

To avoid counterfeit of your product, you can protect it as a design or model.

Industrial designs and models have defined the outward appearance of a product or part thereof, resulting from the features of, in particular, the lines, outlines, colours, shape, texture and/or materials of the product itself and/or its ornamentation that is new and has an individual nature.

Industrial designs comprise all two-dimensional shapes such as patterns on tissues and paper. Models on the other hand cover all three-dimensional shapes of objects.

Depending on where you would like to protect your design and model, your company can opt for a Benelux protection, a community protection or international protection. The community design is a unitary system wherein one application grants protection throughout the European Union. There are two types of Community design protection with equal value in all the Member States: Registered

Community Designs (RCD) and Unregistered Community Designs (UCD).

A Registered Community Design provides you with an exclusive right to use the design as well as the right to forbid third parties from using such right without the owner's permission. The fact that the right is registered constitutes an important feature as it gives the creator certainty and solidity in case of infringements.

An unregistered Community Design confers you a right to forbid the same actions as you have under a RCD, though only in the event the design is copied (or if a design is derived therefrom). The UCD is often used by businesses where products are very quickly outdated.

In addition protection can be granted for an international designs in several designated Member States, by filling in one application.

	BENELUX design or Model	Community design	International registration
Where ?	Benelux Office for Intellectual Property (BOIP) Belgian Office for Intellectual Property (OPRI)	Office for Harmonisation of the Internal Market (OHIM) in Alicante	World Intellectual Property Organisation (WIPO)
How long protected ?	period of five years which can then be extended for 4 consecutive terms up to a maximum of 25 years	RCD: initial protection term of five years renewable in blocks of five years with a total maximum of 25 years UCD: protection term of three years	five years renewable up to 15 years unless otherwise provided under national laws of designated states

9.5 Databases

A database can be defined as a compilation of works, data or other autonomous elements, systematically or methodically sorted and separately accessible by electronic means or otherwise.

In Belgium, databases can be protected by copyright and a “sui generis” right, a specific right of its own kind.

Copyright protection

First, there is a protection granted on the works that form the compilation e.g. a cooking book is a database where all different recipes will in itself be protected by copyright law when they meet the criteria of copyright protection. If you build a database with works of someone else, you will first need to ask for their permission.

Second, the protection of a database as being a compilation of works will be possible when it is original and is the result of an intellectual activity of the mind and reflects the personality of the author. Database can e.g. meet the criteria by arranging the works in a specific way.

Sui generis protection

There exist a specific protection for databases who do not meet the criteria for copyright protection but who are economically valuable.

You will only be able to rely on the sui generis protection when the following criteria is fulfilled: you have done a substantial investment (time, moneywise, etc) which is essential for the creation of the data base.

This sui generis right will grant you the possibility to object the extraction or re-use of the database without permission when you have not yet made the database public.

Co-existence

A co-existence of both rights is possible. A database can be protected by copyright law and sui generis right at the same time. Both rights exist next to each other and do not influence each other.

	Protection database
How long protected ?	<p><u>Copyright protection</u> During the life of the author and 70 years after his dead.</p> <p><u>Sui generis protection</u> 15 years as from the first of January of the year following the date of completion or, in case the database is made available to the public, the date when it was first made available to the public.</p> <p>However, it should be noted that every substantial change of the database will lead to a new protection term of 15 years.</p>

9.6 Know-how

The Coca-Cola Company is one of the famous examples of a company that has kept his recipe secret within the company.

A concrete legal framework for the protection of know-how does not exist in Belgium. The field of know-how, confidential or undisclosed information is mostly dealt with by civil law and contract law and not by specific intellectual property rights.

A framework for unfair competition can be found in the TRIPS agreement which protects 'undisclosed information'. Under article 39 (2) TRIPS, private individuals and legal entities have the right to prevent information that is lawfully in their possession from being made public, or acquired or used by others without their permission in such a manner as is in conflict with fair commercial practices, providing this information meets the following conditions:

- I. It is secret in the sense that it is not, generally known among or readily accessible to persons within the circles that normally deal with this kind of information;
- II. It has commercial value because it is secret; and
- III. The person lawfully in control of the information has taken reasonable steps under the circumstances, to keep it secret.

Although the information needs to be secret, this does not mean that the know-how should be totally unknown or unobtainable outside the owner's business.

In addition, because the information is secret, a commercial advantage is obtained by the company. Reasonable steps should be taken to make sure the information is kept secret. This can e.g. be done by the use of a secrecy clause in the contract.

Only know-how has an unlimited term of protection, due to the non-public nature thereof.

9.7 Computer programs

Software can be defined as a program or a series of programs that contains instructions a computer needs for the operational processes inside the computer itself (system software) or for carrying out of other tasks (application software).

The protection of software has since decades been highly discussed. In the 70s and 80s discussions appeared whether software should be protected by copyright law, patent law, or a specific sui generis system. This debate resulted in the general accepted principle where computer programs should be protected by copyright law, apparatus using software or software related inventions should be protected by patent law⁷. However, discussions still appear.

• **Patentability**

It is not always clear if software can be protected by patents. The European Patent Convention, excludes the protection of 'computer programs' as such from patentability. However, patentability is possible for 'computer-implemented' inventions. According to the caselaw of the Boards of Appeal of the European Patent Office (EPO) a computer program is not excluded from patentability under article 52(2) and (3) EPC on the condition that when it is run on a computer, it produces a further technical effect which goes beyond the "normal" physical interactions between program (software) and computer (hardware) e.g. software that is included in a computer and makes the computer function patentable.

Computer programs and computer implemented inventions (CIIs) will be patentable if they fulfil the same three criteria which are the same requirements for inventions in other fields:

- have a technical character and solve a technical problem (invention);
- be new;
- involve an inventive technical contribution to the existing state of technology;
- be licit.

It should be noted that the practice of the EPO in granting patents differs from the approach of the United States Patent and Trademark Office (USPTO), where patent protection for software is granted, even if it does not solve a technical problem.

The European Commission has already proposed a Directive on the protection by patents of computer-implemented inventions, which aims to harmonise the way in which national law deals with inventions using software. The Directive was rejected by the Parliament in 2007. As result, different interpretations appear to what is patentable and what is not.

⁷ WIPO, Copyright protection of computer software, <http://www.wipo.int/copyright/en/activities/software.html>, last consulted November 2015.

X. PROTECTION OF COMPETITION

10.1 Fundamentals⁸

Are considered as restrictive practices,

- all agreements between undertakings,
- all decisions of associations of undertakings and
- all concerted practices,

the object or effect of which is to prevent, restrict or distort to an appreciable extent in the Belgian market concerned or in a substantial part of that market. These practices are prohibited under the Code of Economic Law (art. IV.1 § 1), hereafter CEL or Competition Act.

Is also considered as a restrictive practice the abuse of a dominant position in the relevant Belgian market or in a substantial part of it by one or more undertakings (art.IV.2 of the Competition Act).

The restrictive agreements which infringe article IV.1, §1 of CEL IV or article 101 §1 of the Treaty on the functioning of the European Union (TFEU) are legally null and void (article IV.1, §2 of CEL IV or article 101 §2 of the TFEU).

- Pursuant to Regulation (CE) 1/2003, the Belgian Competition Act introduces a system of legal exception, where, the notification system, with the intention to obtain a negative clearance or exemption, is lifted.
- Restrictive practices are prohibited by the articles IV.1 and IV. 2 of the Act and by the articles 101 and 102 of the Treaty on the functioning of the European Union.
- Restrictive agreements infringing article IV.1 §1 of the Act or article 101 §1 of the TFEU are ipso jure invalid (art.IV.1 §2 of the Act and article 101 §2 of the TFEU).
- The prohibition shall not apply if the conditions of article IV.1 §3 of the Act or the conditions of article 101 §3 of the EC treaty are met.
- Abuses of a dominant position are prohibited.

Restrictive practices which can affect trade between European member states must be tested by the competition authorities and the national courts of law against articles 101 and 102 of the Treaty on the functioning of the European Union.

10.2 Enforcement, settlement & leniency⁹

- An investigation can be opened by the competition prosecutor general after hearing the chief economist in cases covered by the act (art.IV.26, §2 3° and art.IV.41 §1 of the Act).
- In on-going investigation, the College of Competition Prosecutors may at any moment during the procedure (but before the draft decision is submitted to the president) fix a term to hold transaction talks.
- The Investigation Service identifies the grievances and gives a notice of the minimum and maximum fine which it considers to propose to Competition College.
- If a transaction is possible, the undertaking must admit their involvement, assume responsibility and accept the proposed sanctions.
- The College of Competition Prosecutors may apply a 10% reduction of fine.
- If all parties agree the College of Competition Prosecutors takes a decision including the fine whereupon the procedure is closed.
- This decision is regarded as a decision of the Competition College (art.IV.51 to art.IV.57 of the Act).
- The Competition College may adopt interim measures intended to suspend the anti-competitive practices under investigation, if there is an urgent need to avoid a situation likely to cause serious, imminent and irreparable damage to undertakings whose interests are affected by such practices or likely to harm the general economic interest (art.IV.64, §1 of the Act).

The Competition College can impose:

- undertakings and associations of undertakings fines of up to 10% of the turnover for infringements of the articles IV.1 and/or art.IV.2 of The Act.
- undertakings fines of up to 5% of the average daily turnover for non-compliance with prohibitive decisions or decisions of interim measures;
- undertakings fines of up to 1% of the turnover for not notifying a merger that falls within the scope of the Act;
- Persons, undertakings or associations of undertakings fines up to 1% of their turnover for not being co-operative during investigations (art.IV.70 and art.IV.71 of The Act).

⁸ <http://economie.fgov.be>

⁹ <http://www.concurrence.be>

An undertaking or associations of undertakings who have taken part in a cartel can obtain

- a total or partial exemption from financial sanctions,

if that undertaking has contributed to prove the existence of these illegal practices and the identification of the parties responsible for that practice, in particular

- by providing information which the Competition Authority did not previously have,
- by providing the proof of a practice prohibited by article IV.1 §1 of the Act and whose existence had not yet been established,
- or by recognizing the existence of the prohibited practice.

When a decision is taken pursuant to this article IV.46 §1 and if the conditions specified in the leniency decision have been respected, the Competition College can grant an exemption from financial sanctions in proportion to the contribution which was provided in order to prove the infringement (art. IV.46 of the act).

Natural persons who are acting for the account of an undertaking which has involved in a practice prohibited by art.IV.1 of the Act may appeal for immunity from sanctions to the College of Competition Prosecutors.

The Competition College may grant immunity from prosecution if this person has contributed to prove the existence of anti-competitive practices.

- The decisions of the Competition College may be appealed before the Brussels Court of Appeal.

10.3 Merger control¹⁰

A concentration refers to each act that entails a permanent change of control over an undertaking. Control over an undertaking is the possibility to exercise a decisive influence over her activities.

A concentration can take place:

- when two or more independent undertakings or parts of undertakings decide to merge;
- when an undertaking or a person who has control over an undertaking takes over another undertaking or a part of the activities of this

undertaking and acquires by this way exclusive control over it;

- when undertakings create a joint venture, that performs all the functions of an autonomous economic entity on a lasting basis.

For a complete overview of the concentration proceedings see article IV.6 of the Competition Act hereafter The Act.

In Belgium only concentrations of a certain dimension (size) are subject to the prior approval of the Competition College.

To determine which concentrations should be subject to prior approval, the legislator has introduced thresholds of notification.

Only undertakings which fulfil the following two conditions are subject to approval:

1. the undertakings concerned, taken together, must have a total turnover in Belgium, of more than 100 million euro,
2. and at least two of the undertakings concerned must each have a turnover of at least 40 million euro each in Belgium (article IV.7 §1 of The Act).

If undertakings that want to merge or conclude a concentration, exceed these thresholds, the concentration must be notified to the competition prosecutor general (article IV.10 of the Act).

Concentrations, which are subject to the control of the European Commission, are not subject to the approval of the Belgian Competition College (see regulation EC NR. 139/2004 of the Council of the European Union January 20, 2004 concerning the control on mergers).

This is an exclusive power of the European Commission . Nevertheless, under certain conditions, these can be referred to the Belgian Competition Authority.

The regulation (EC) n° 139/2004 of the Council of the European Union of January 20, 2004 concerning the control on concentrations of undertakings determines the conditions under which a concentration is subject to the control of the European Commission and in which cases the referring mechanisms are applicable.

¹⁰ <http://economie.fgov.be>

XI. BUSINESS PRACTICES & CONSUMER PROTECTION¹¹

Investors should be aware of the various requirements regarding business practices between undertakings (B to B) and the consumer protection in his relationship with the undertakings (B to C). This is laid down in the Code of Economic Law (book n° VI).

11.1 Comparative advertising

The comparative advertising is considered as legal if all these conditions are met (Article VI. 17):

- it is not misleading;
- it compares goods and services that meet the same needs or that have the same goal;
- it objectively compares one or several essential, relevant, ascertainable and representative characteristics of these goods and services;
- it does not give rise to confusion with competitive goods or services;
- it uses neither the prominence of the competitors nor the designation of origin of their goods;
- it denigrates neither their competitors nor their

goods or services they provide;

- Regarding the goods with designation of origin, the advertising relates in each case to goods with the same designation;
- it does not present a good or a service as an imitation or a reproduction of a good or of a service with a brand or with a commercial name which are protected.

11.2 Abusive clauses

Clauses in a contract concluded with a consumer can be regarded as abusive and therefore nul and void. The rest of the contract can still be applicable if it can remain without such abusive clauses.

There are two ways to identify a clause as abusive: (i) either the clause presents the characteristics as laid down in the general definition (art. I.8, 22°) (ii) or it is one of the clause which is listed in the Code of Economic Law (art. VI.83).



¹¹ <http://economie.fgov.be>

The global definition refers to any clause in a contract which alone or combined with other clauses creates an obvious imbalance between rights and duties of the parties to the detriment of the consumer.

The list includes most notably clauses that stipulate that the undertaking can unilaterally increase the price without any objective criteria or that the undertaking can set or modify the delivery date.

11.3 Pre-contractual information

Before the conclusion of a distance contract, the undertaking has to inform the consumer on various points. Most notably, he has to inform about the identity of the undertaking, the characteristics of the goods or the services, the total price inclusive of taxes, terms of payment, the delivery method, the delivery date, the conditions, the deadline and the terms and conditions of the withdrawal period, the duration of the contract and the cost of returning the goods.

11.4 Withdrawal period

In principle, when a distance contract is concluded with a consumer, this latter can still withdraw from the contract within a period of 14 days without stating the reasons and without any fees but the ones legally foreseen.

The undertaking has to inform the consumer of his right of withdrawal. If it does not do so, the withdrawal period is of 12 months as from the end of the initial withdrawal period.

11.5 Sale below cost

A sale below cost is a sale at a price which is not at least equal to the price in which the undertaking bought the good, after deduction of

- the granted and finally acquired discounts;
- not finally acquired volume discounts which amount to 80% of the volume discounts which were acquired last year for the same good.

It is prohibited as a matter of principle but in some exceptional cases, it is accepted.

If you require any further information or would like a simulation with figures adapted to your project, PLEASE, CONTACT US :

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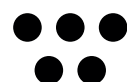
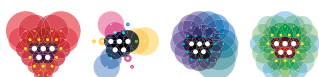
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