e-iure.com

International Law Firm Alliance
COMPENDIUM 2013

"We shall make it together by walking"

corbus
ADVOCATEN LAWYERS AVOCATS

→ Belgium

Belgian business law firm focusing on Corporate and Commercial Law, IP/ICT, Labor law, Real Estate, Public law, Commercial mediation.

Corbus was founded with a straightforward mission: to build a law firm from the client's perspective: specialized, personal, fast and practical services, at competitive and transparent rates. The brand name Corbus refers to core business and business law, with a focus on what really matters for its clients.

→ Foreign Investment Law

Belgium one of the world's most attractive countries for foreign investments (Source: www.business.belgium.be). Belgium has notched up second place, behind Hong Kong and ahead of Singapore, in the 2012 global Foreign Direct Investment (FDI) Attraction Index published by the United Nations Conference on Trade and Development (UNCTAD).

As regards the contribution of FDI and foreign affiliates to the economy (in terms of value added, employment wages, tax receipts, exports, R &D expenditures and capital formation), Belgium is also second in the world, behind Hungary and ahead of the Czech Republic

One State, three autonomic regions

Belgium is a federal State consisting of three regions: Brussels, Flanders and Wallonia. Flanders and Wallonia are among the most attractive regions in Europe, while Brussels is in the top 10 major European cities in terms of infrastructure, quality of life and human resources. The regions have a substantial degree of autonomy, making the Belgian State one of the most advanced in the world.

The regions' responsibilities include: trade, economy, employment, industrial zones, agriculture, environment, etc. Each region conducts a dynamic, made-to-measure economic policy and can provide you with free and confidential professional assistance with carrying out your business project.

Tax benefits

All commercial companies in Belgium are subject to corporation tax. The nominal corporate tax rate is 33.99%. For small and medium-sized enterprises (SMEs) with a taxable profit not exceeding €322,500, the tax rate drops to 24.98%. Legal mechanisms make it possible to lower the nominal rate. Various tax incentives for individuals and companies make Belgium one of the most attractive places to locate and do business.

Ruling

Belgium's tax legislators are aware of the increasing importance of upfront legal certainty for existing and potential investors. Accordingly, Belgian tax legislation provides economic players with a generally applicable advance 'ruling' practice. The procedure is simple, rapid, efficient and free of charge. The ruling is an advance decision that is issued within three months and is legally binding for up to five years.

Notional interest deduction

One of the most innovative measures is the 'notional interest deduction'. This is a tax deduction for venture capital which alleviates the differences in tax treatment between finance raised through borrowed capital and finance raised through equity capital. The system allows companies to deduct from their tax base a notional interest charge (not stated in the accounts) corresponding to a specific percentage of their 'adjusted' equity capital.

Tax Shelter

Tax Shelter is a tax incentive designed to encourage the production of audiovisual works and films. The system allows companies wishing to invest in the production of an audiovisual work to benefit from a tax exemption on retained profits worth up to 150% of the capital actually invested.

Dividend withholding tax exemption

The withholding tax exemption on some dividends is also very popular with investors. This new exemption extends the European Parent-Subsidiary Directive between the EU Member States and Switzerland to all countries that have a double tax treaty with Belgium, such as Hong Kong and the United States.

Using Belgium as their holding location for investments in Europe allows corporate investors from treaty countries to repatriate European profits without paying dividend withholding tax and without a limitation on profits.

Reduced wage costs

The Belgian tax system also offers attractive conditions for employers, including lower wage costs for foreign executives and researchers. 'Expat' employees posted to Belgian entail real, but reasonable, additional costs for their employer, company or relevant legal person. Fortunately, however, employers do not have to pay tax on the remuneration of these foreign executives. There is also a substantial exemption from payment of wage tax for researchers.

R&D

There are various tax incentives for research & development:

- Partial exemption from payment of wage tax for researchers
- Tax exemption on allowances and capital and interest subsidies awarded by regional institutions to support corporate R&D
- Tax deduction on patent income
- Increased investment deduction
- Tax credit for R&D

→ Corporate Law

Belgian company law is governed by the Code on Company Law (BCL) introduced by the Law of 7 May 1999. The accounting obligations and the requirements to draw up and publish annual accounts are governed by the Law of 17 July 1975.

Following the example of the BCL, a Royal Decree of 30 January 2001 has combined all existing royal decrees that implemented the BCL. Included are the Royal Decrees dealing with accounting issues and those implementing the Law of 17 July 1975:

- the Royal Decree of 8 October 1976 on the annual accounts of companies and some articles of the two Royal Decrees of 12 September 1983 implementing the Law of 17 July 1975;
- the Royal Decree of 6 March 1990 dealing with companies' consolidated accounts.

All of these laws and decrees are referred to hereinafter as the accounting law.

Specific sectors or specific activities are governed by separate legislation and regulations, such as the Law of 22 March 1993 on the control of credit institutions and the Law of 9 July 1975 on insurance companies.

Any type of Belgian company can be incorporated without prior governmental or judicial consent, except in the case of a regulated business such as banking, management of estates, insurance and finance leasing. The formation of a pure holding company is not subject to any special requirement or authorization. However, if the company's statutory purpose includes the management of, or the provision of advice with respect to, third party assets (beleggingsondernemingen/entreprises d'investissement), it falls under the regulations of the Law of 6 April 1995 on financial transactions and financial markets. In that case, the company must obtain prior authorization to exercise such activities from the {CBFA}. CBFA authorization is granted only where several conditions are satisfied, including:

- a minimum paid-up capital of EUR 250,000;
- effective management is exercised by at least two individuals (no legal entities);
- CBFA is satisfied as to the capacity and suitability of the main shareholders; and
- specific regulations with respect to the general organization (e.g. infrastructure, administration, accounting, control, structure of the group, etc.) are complied with.

There exist various types of companies in Belgium. The 2 most common types are:

NV/SA, a private or public company with limited liability and the most commonly used type of company for larger dealings. A NV/SA is defined in the BCL as a company whose share capital is divided into shares of stocks (actions) and whose shareholders are only liable to the extent of their contribution to the share capital, which must be a minimum amount of EUR 61,500.

BVBA/SPRL; a closely held limited liability company. A BVBA/SPRL is defined in the BCL as a company that is formed by one or more partners who only commit their own contribution and in which the rights of the shareholders can only be transferred under specific conditions. The minimum share capital is EUR 18,600.

The basic requirements must be evidenced in an authenticated (notarial) deed. An abstract of this notarial instrument must be deposited with the Court's Clerk (griffie) of the Commercial Court and must be published in the annexes of the Belgian Official Gazette (Belgisch Staatsblad/Moniteur belge (BS/MB))

The founders of a company are jointly and severally liable for the proper subscription of the capital and for the minimum share capital requirement. It is also possible that the founders, in the event of a bankruptcy within 3 years following incorporation, are held liable for the company's obligations regarding the financial plan.

In order to escape such liability, however, it is possible, under certain conditions, that the founder(s) appear in the deed of incorporation not as incorporator(s), but as subscriber(s) to the issued shares (Art. 450 {BCL}). In this case, the deed must then explicitly appoint one or more other founding shareholders, having together at least one third of the company's share capital, as incorporators of the company.

Shareholders

The founders/incorporators of an {NV/SA} or {BVBA/SPRL} may be individuals or legal entities, residents or non-residents, Belgian nationals or foreigners. At least two persons are needed for the incorporation of an {NV/SA}. In contrast, a {BVBA/SPRL} may be incorporated by one single person who must be an individual (Art. 212 {BCL}). If the sole incorporator of a BVBA is a corporate entity, the incorporator is jointly and severally liable to interested parties for all obligations entered into by the company as long as there is only one shareholder (Art. 213 BCL).

After the incorporation of an NV/SA, the number of shareholders may not drop below two for any period longer than 12 months. If after such period, there is still only one shareholder, the sole shareholder will be held jointly and severally liable for the debts of the company until either (i) a second shareholder is found, (ii) the company is transformed into a BVBA/SPRL, or (iii) the company is liquidated dissolved (Art. 646 BCL).

In case a legal entity becomes the sole shareholder of an BVBA/SPRL and no new shareholder has joined the company within 12 months or it has not been wound up, the sole shareholder shall be considered to be a joint and several guarantor of any obligations of the company arising after he acquired all the shares until a new shareholder has joined the company or until the publication of its winding-up (Art. 213 BCL).

Incorporation

The {NV/SA} and the {BVBA/SPRL} are created by a notarial deed. Under the terms of the law governing language requirements, this deed must be drawn up and executed in Dutch, French or German, depending on the location of the company's registered seat.

Before the incorporation, a financial statement must be presented by the founders to the notary (Arts. 215, 440 and 657 {BCL}). The financial statement consists of a provisional budget to show that the share capital is sufficient to ensure the normal activity and functioning of the corporation during 2 years. This statement is retained by the notary, but is not published. In the event that the corporation is declared bankrupt during its first 3 years of operation, this financial statement may be subpoenaed by the Commercial Court. The Court may then hold the founders (wholly or partially) liable for debts of the corporation if the amount of the share capital was clearly inadequate to satisfy the corporation's requirements for the planned activities for the first 2 years.

Before the incorporation the amount of the paid-in share capital must be paid into a separate bank account to be opened in the name of the company being incorporated. A certificate of the bank evidencing that the funds have been paid in and are available for the company's use must be delivered to the notary.

The company obtains legal personality as from the date the abstract of the notarial deed of incorporation is filed with the Clerk's Office of the Commercial Court (Art. 2(4) {BCL}). In the absence of the deposition of the notarial deed, the company will be treated as a commercial partnership, with the resulting effect that all of its partners can be held severally liable for the obligations entered into by a partner (Art. 52 BCL). If the excerpt of the notarial deed of incorporation is not published in the Belgian Official Gazette, the document itself may not be used against third parties unless the company proves that such third persons had knowledge of it (Art. 76 BCL).

Foreign companies with a branch in Belgium, and those who have appealed to Belgian public savings can only initiate and continue legal proceedings if their deed of incorporation is filed with the Clerk's office of the commercial court (Art. 58 BCL).

Certificate of professional knowledge

At the time of registration of the company with the Trade Register, the managers of certain companies as defined below must submit a certificate evidencing their capacity and professional knowledge of the business to be conducted by the company. This applies to so-called small and medium-sized enterprises (SMEs) which are defined as follows by the Law of 10 February 1998 on the promotion of independent entrepreneurship:

- the average number of employees on an annual basis does not exceed 50;
- not more than 25% of the shares representing the share capital or to which voting rights are attached are held by one or more enterprises, other than SMEs; and
- the annual turnover does not exceed EUR 7 million or the total of the annual balance sheet does not exceed EUR 5 million.

This condition does not apply with respect to activities that have already been regulated based on the Law of 1 March 1976 with respect to the regulation or protection of certain professional titles and the exercise of certain intellectual professions (for example accountants, real estate brokers, etc.).

Capital requirements

The minimum share capital for an {NV/SA} and is EUR 61,500. The share capital must be fully subscribed and 25% of each share of stock must be paid up (note, however, that the legal minimum share capital of EUR 61,500 must always be fully paid up). The remainder may be claimed by the company in accordance with its financial needs.

The directors are jointly liable to third parties, notwithstanding any contrary stipulations, for the full amount of the share capital that was not validly subscribed, the amount of the legal minimum share capital that was not paid up and for the 25% of the share capital exceeding the legal minimum that was not paid up. They are further jointly liable for paying up the shares

representing a contribution in kind, if those shares were not paid up within 5 years following the contribution (Art. 610 {BCL}).

The share capital must be fully subscribed and 25% of each share of stock must be paid up. The remainder may be claimed by the company in accordance with its financial needs. A legal reserve must be established as follows. At least 5% of the net profits of the company must be credited annually to the reserve until it reaches 10% of the share capital. This reserve may not be distributed, but may be converted into share capital (Art. 319 BCL).

The minimum capital requirement for a {BVBA/SPRL} is EUR 18,550, which must be fully subscribed (Art. 214 BCL). The incorporators shall be jointly and severally liable to interested parties, notwithstanding any contrary stipulation, for any difference between the minimum capital required and the issued amount (Art. 229(1) BCL).

At least EUR 6,200 must be paid up at the time of incorporation. Shares representing contributions in kind must always be fully paid up. Shares in cash must be paid up for at least 20%, except if paid in upon incorporation for the minimum capital requirements as indicated above.

If a BVBA/SPRL has only one partner, the Law of 14 June 2004 (regarding the obligation to pay up the share capital in a BVBA/SPRL with only one partner) now sets forth that at least EUR 12,400 of the share capital must be paid up within 1 year (instead of EUR 6,200).

A BVBA/SPRL that already had only one partner the day the new law became effective (2 August 2004), must make sure that at least EUR 12,400 of the capital is paid up at the latest on 2 August 2005. If the BVBA/SPRL, however, accepts a second partner within the year, or if the BVBA/SPRL is put into liquidation within the year, the capital must not be paid up (and can remain EUR 6,200.

The law further states that the sole partner is liable for all the obligations of the company until the capital is paid up for at least EUR 12,400 (or a second partner is appointed if the company is put into liquidation).

Duties and fees

The contribution of share capital to a company is subject to a one-time capital duty of 0.5% on the value of the contribution, whether made in cash or in kind. The contribution of a branch of activity or of all assets and liabilities by a company established within the European Union is fully exempt from capital duty. Pursuant to Art. 117(3) of the Registration Tax Code (Reg. TC), an exemption from capital duty is available for the contribution of substantial participations in EU-based subsidiaries.

Formation expenses

NOTARIAL FEES: The cost of the notarial deed required to incorporate the company varies according to the amount of work involved and the size of the company's capital. For example (based on 2003 figures available):

Incorporation of {NV/SA} (in Euros):

SHARE CAPITAL	FEE/DUTIES	REGISTRATION	EXPENSES	TOTAL (%)
61500	458.00	307.50	637.00	1,400.50 (2.28%)
100000	671.74	500.00	637.00	1,810.74 (1.05 %)
400000	1569.78	2000	637.00	4,206.78 (1.05%)

Incorporation of {BVBA/SPRL}:

SHARE CAPITAL	FEE/DUTIES	REGISTRATION	EXPENSES	TOTAL (%)
18500	105.74	92.75	552.00	750.49 (4.05%)
100000	461.13	500.00	552.00	1,513.13 (1.51 %)
400000	111549	2000	552.00	3,667.49 (0.92%)

In addition, fees and costs related to specific acts connected with the incorporation may be charged, such as the fees payable for registering the company (EUR 130, plus EUR 70 per additional office or establishment), the publication expenses (publication of excerpt of incorporation deed in the Belgian Official Gazette : EUR 202.31 per publication, EUR 126.55 for changes).

The publication of the annual accounts is subject to charges of EUR 415.82 or EUR 391.62 if the accounts are submitted on paper or on disk, respectively (reduced to EUR 190.76 and EUR 166.56 respectively for the simplified accounts.

Vat

The cost for registration with the VAT authorities is EUR 60.50 when done via a officially recognized counter ("erkend ondernemingsloket"). If the company decides to register itself, no cost is to be taken into account.

Management

NV/SA: The NV/SA is managed by a board of directors (raad van bestuur/conseil d'administration) which must be composed of at least three directors (bestuurders/administrateurs) who may be Belgian or foreign individuals or legal entities (Art. 518 {BCL}). The number is reduced to two if the company has only two shareholders.

BVBA/SPRL: The {BVBA/SPRL} is managed by one or more managers (zaakvoerders/gérants) who may or may not be shareholders (Art. 255 {BCL}). They are appointed either in the articles of association or by the shareholders for the entire life of the BVBA/SPRL, unless the articles or the shareholders stipulate otherwise.

Powers of management

NV/SA: The powers attributed to directors of an NV/SA are attributed to them collectively. Consequently, the directors can in principle only act as a board. The board of directors is in principle authorized to perform all activities reasonably connected with the statutory purpose of the company and which have not been explicitly reserved by the law to the shareholders' meeting (Art. 522(1) {BCL}) (the so-called residual powers of the board of directors). Although the articles of association can limit this authority of the board of directors (limitation in amount or in tasks), the company will not be entitled to invoke such limitations against third parties (Art. 522(1) BCL). These limitations can only lead to the liability towards the company of the directors violating them. Worded differently, the company will be bound by the obligations entered into on its behalf by the board of directors, notwithstanding the fact that by entering into such obligations the board violated the limitations contained in the articles of association.

As mentioned above, the powers of the directors are also limited by the statutory purpose of the company. It must be noted, however, that the company will also be bound by the obligations entered into on its behalf by the board of directors, notwithstanding the fact that by entering into such obligations the board violated the statutory purpose of the company as included in the articles of association (Art. 526 {BCL}). There is only one exception to this rule. The company will not be bound in case it can establish that the third party knew (or should have known) that the board was violating the statutory purpose of the company. The publication of the articles of association as such does, however, not constitute sufficient proof thereof.

Since the board of directors is a collective body, individual directors are in principle not entitled to act in the name of the company. The articles of association may, however, appoint one or more directors who are authorized to represent the company (Art. 525 {BCL}). Such provision (i.e. one (or two) signature clause) must be published.

In 2010 a new law was adapted concerning the amendment of the existing rules of proper management in quoted companies and government affiliated companies. This law fits in a

broader approach on corporate governance with soft law instruments which have gone into effect in the past decade.

BVBA/SPRL: In case several general managers have been appointed, they will only have to act as a board if the articles of association contain a provision in this sense. Each general manager may perform whatever shall be necessary or useful for the realization of the statutory purpose object of the company, save to the extent of the powers reserved by law to the shareholders' meeting (Art. 257 {BCL}). Although the articles of association can limit this authority of the general manager, the company will, as with an {NV/SA}, not be entitled to invoke such limitations against third parties (Art. 257 BCL). These limitations can only lead to the liability towards the company of the manager violating them.

The company shall be bound by the acts of the general manager even if such acts are beyond its statutory purpose, unless it proves that the third party was aware thereof or, taking into consideration the circumstances, could not have been unaware thereof. Again, the publication of the articles of association will not as such constitute sufficient proof of such awareness (Art. 258 BCL).

Each general manager can represent the company in its dealings with third parties and at law as plaintiff or as a defendant (Art. 257 {BCL}). The articles of association may, however, contain a signature clause (e.g. stipulating that the company can only be validly represented by two or more managers), which can be invoked by the company against third parties provided that the clause has been duly published (Art. 257 {BCL}).

Organization and functioning of management

NV/SA: Generally, the day-to-day management of the {NV/SA} is carried out by one or more managing directors (afgevaardigde bestuurder/administrateur délégué), or by one or more managers (directeur-generaal/directeur général) who are authorized to represent the NV/SA for that purpose. Managing directors are members of the board who are appointed by the board itself or by the articles of association. Managers are not members of the board of directors and, until recently, could only be appointed via special proxies (if allowed by the articles of association) are appointed in accordance with the articles of association.

A change in the BCL (the Law of 2 August 2002 on corporate governance), however, institutionalized the general practice that existed in larger companies of working with management committees (directiecomités). Before the change in law, the managers working in these committees always had to be appointed via a special proxy, the content of which needed to be very precise. The board was further not allowed to delegate all or nearly all of its competences to the managers. Practice, however, showed this was most often the case.

Art. 524 bis {BCL} now provides that the board of directors can delegate most of its competences to a management committee (directiecomité). An exception is made for general strategic decisions and for decisions for which only the board of directors is competent, pursuant to specific articles in the BCL.

The same law (the Law of 2 August 2002 on corporate governance) provided that the existing rules regarding a conflict of interest of a director with a transaction envisaged by the company are also to be applied to the management committee. These rules provide that a director, when having a direct or indirect financial interest which conflicts with the decision or transaction envisaged by the company, must inform the other directors before the board takes the decision. If the company is a public company, the director with a possible conflict of interest is further not allowed to participate in the deliberation of the board of directors regarding the decision or transaction envisaged (Art. 523 {BCL}). The company can ask for a nullification of the decision of the board made in breach of the above-stated rules. These rules now also apply to the management committee (Art. 524 ter BCL).

The Law of 2 August 2002 further obliges listed companies to install a committee of (at least) three independent directors (comité van onafhankelijke bestuurders). Every decision or transaction made in execution of a decision made by a listed company (1) in its relation with an affiliated company (its subsidiaries excluded), or (2) in the relation between its subsidiary and a company affiliated with this subsidiary (the subsidiaries of its subsidiary excluded), needs to be submitted to the said committee. The committee drafts a report of the decision or transaction envisaged and presents it to the board of directors. The board takes a decision, bearing in mind the rules regarding a possible conflict of interest as set out above (Art. 523 {BCL}).

An exception is made for the day-to-day transactions, provided they are at arm's length conditions, and for decisions or transactions not exceeding 1% of the net equity of the company (based on its consolidated accounts). The company can ask for a nullification of the decision of the board made in breach of the above stated rules.

BVBA/SPRL: In the case of a BVBA/SPRL, generally the managing director manages the day-to-day affairs of the company.

Dismissal

The directors of an {NV/SA} may be removed from office at any time by a simple majority vote of the shareholders' meeting (Art. 518(3) {BCL}). This so-called ad nutum rule is an imperative provision. Any provision in the articles of association that deviates from this ad nutum rule is, therefore, null and void. The conditions for dismissal of members of the management committee are determined by the board of directors (e.g. a prior notice of 3 months). If nothing is stipulated, the members can be removed from office at any time.

Unless the articles of association provide otherwise, the manager(s) of a BVBA/SPRL who was appointed in the articles of association, can, only be dismissed by changing the articles of association and for serious reasons. A general meeting must be convened before a notary public during which the dismissal can be decided, since the dismissal causes a change in the company's articles of association (and changes in the articles of association can only pass before a notary public). The "serious reasons" are not required in case the shareholders agree unanimously to change the articles of association and to replace the manager. This will of course be impossible if the manager is a shareholder himself.

The manager(s) of a BVBA/SPRL who was not appointed in the articles of association, may be removed from office at any time (ad nutum) by a simple majority vote of the shareholders' meeting, unless otherwise agreed.

Transfer of shares

Possibility to transfer shares

NV/SA: The shares are in principle freely transferable, irrespective of their form (i.e. registered, to bearer or dematerialized). The articles of association or any other convention can, however, provide certain restrictions to this transferability. Such limitations on the transfer of shares must be limited in time and may not be contrary to the interests of the company (Arts. 510 and 657 {BCL}).

Such limitations on the transfer of shares will in most cases consist of an acceptance clause and/or a pre-emption right. If this is the case, these clauses may not prevent the transferability of the shares for more than 6 months from the moment that they are invoked. The same rules apply to provisions in the articles of association or in any agreement restricting the transferability of warrants and convertible bonds. Shareholders' agreements which violate these rules are void (Arts. 551 and 657 BCL).

Profit sharing certificates can in principle not be transferred before the tenth day after the filing of the second annual accounts since their issuance (Arts. 508 and 657 BCL). The Royal Decree of 8 October 2008 has changed the rules concerning shares of a NV. Most important change of this Royal Decree is the fact that the rules on acquisition of own shares are made less rigid.

The so called 'financial assistance'is no longer prohibited, but made possible under certain circumstances (control by the society Board and against reasonable conditions, preliminary approval by the General Meeting , duty of report by the Board, susceptible for payment and payment of a fair price by the third party). Other changes include the deposit in kind which no longer needs an preliminary expertise and the buying of own shares which is possible for up to 20% (in the past: 10%).

BVBA/SPRL: Unless the articles of association provide for more stringent provisions, the shares may not be transferred during life or after the death of a shareholder, other than with the consent of at least one half of the shareholders, holding 75% of the share capital, less the rights in respect of which the transfer is proposed (Art. 249 {BCL}).

Unless the articles of association provide otherwise, such consent shall, however, not be required if the shares are transferred:

- to a shareholder;
- to a spouse of the transferor or the testator;
- to blood relatives in the direct ascending or descending line; or
- to other persons permitted by the articles of association.

Heirs and legatees of shares who cannot become shareholders because they are not permitted pursuant to the above-mentioned rules, shall be entitled to the value of the transmitted shares (Art. 252 {BCL}).

Unless the articles of association provide otherwise, interested parties may appeal to the competent court, in summary proceedings, against a refusal of consent with respect to a transfer among the living (Art. 251 BCL).

Control of transfer of shares - prior authorization

In the case of a public takeover bid or a private transfer of a controlling participation in a Belgian public company, prior disclosure of the identity of the offeror and the conditions of the offer as well as notification of the {CBFA} may be required.

Compulsory transfer

Arts. 334 and 636 of the {BCL} regulate the possibility for certain shareholders of a non-public {NV/SA} and of a BVBA/SPRL to file a demand with the courts in order to force another shareholder to transfer his shares (and other convertible securities in his possession) to the initiators of the procedure. This demand cannot be made by the company itself, nor by its subsidiary. The initiator of this procedure will have to establish that he has legitimate reasons (e.g. serious default to fulfil certain obligations, abuse of majority or minority position, etc.) to demand this compulsory transfer.

Similarly to the procedure described above, Arts. 340 and 642 of the {BCL} stipulate that every shareholder, who has legitimate reasons thereto, can file a demand with the court in order to force other shareholders, to which these reasons apply, to purchase his shares. In this case, his personal interest is taken into account more than in the procedure described above (since he is willing to give up his shares). No minimum percentage of voting rights/shares is required. By way of so-called squeeze-out proceedings, a shareholder who, alone or in consent with

others, owns 95% of the securities with voting rights, can force the shareholders who own the remaining 5% of the securities to sell him all of their shares (Art. 513 {BCL}). For public companies, these squeeze-out proceedings make it possible to end their listing on the stock exchange. Special rules, however, apply.

Records

Each year the directors must prepare the inventory and the annual account which consists of a balance sheet and a profit and loss account with an explanatory memorandum (toelichting/annexe) (Art. 92 {BCL}). These documents must be drawn up in accordance with the regulations set forth under the Accounting Law and any other special law which may govern the relevant company (e.g. the Royal Decree of 1 September 1986 on annual accounts and the consolidated accounts of portfolio holding companies and the Royal Decree of 17 November 1994 on annual accounts of insurance companies).

While the Accounting Law does not require a directors' report (all necessary information must be contained in the explanatory memorandum), company law does require directors to draw up an annual report in which account is given of their policy during the year (Art. 95 BCL).

In addition, company law requires the board of directors to draw up special reports owing to special events during the book year (e.g. conflict of interest of a director (Art. 525 BCL); redemption of own shares (Art. 328 BCL); or decrease of the net value of the company (Arts. 535 and 633 BCL)).

These documents must be submitted to the statutory auditor(s) at least 1 month before the annual shareholders' meeting.

→ Tax Law

This chapter outlines the Belgian tax system. The analysis in this chapter will be helpful to understand its basics. However it is important to stress the complexity of the Belgian regulation, especially because of the division of taxation powers between the different authorities (federal, regional and local) and the fact that the regulation is ever changing. It is therefore advisable to consult an expert when making a major decision.

PERSONAL INCOME TAX

Residents

An individual's liability to tax is determined by his residence. Belgian legislation qualifies two major categories as being a Belgian resident; namely individuals who have established :

- their domicile in Belgium; or
- their seat of wealth.

The "domicile" and the "seat of wealth" do not have the same meaning. An individual can have his domicile abroad, but when his seat of wealth can be located in Belgium, he will still be qualified as a Belgian tax resident.

The term "domicile" is taken to mean the place where the taxpayer effectively and enduringly resides, where his family lives and where personal contacts are maintained. In principle, it clearly comes down to a factual analysis. The seat of wealth is the place where the taxpayer manages his assets or where the centre of his business activities is located (not necessarily the place where his property or assets are situated).

The burden of proof that a taxpayer is a Belgian resident, is placed on the Tax Authorities. However The Belgian Income Tax Code (BITC) lays down an opposable legal presumption that an individual has his domicile or the seat of wealth in Belgium when he is registered in the population register of the municipality where he resides. Belgian residents are taxed on their worldwide income. However, reservations must be made for the application of the different conventions for the avoidance of double taxation closed by the Belgian State.

The taxable income consists of the total net income, i.e. the sum of the net income of the following four categories :

- real estate income;
- income from moveable property;
- earned income;
- miscellaneous income.

The total net income is taxed after the deduction of several expenses. It mainly concerns alimony, gifts, expenses for child care, expenses related to the sole and private residence of the taxpayer, etc. Each taxpayer is also entitled to an exemption of 6,800 EUR (income year 2012; basis amount : 4,095 EUR) of the taxable income. This standard allowances can vary depending on the personal situation, like the number of dependant persons. The income tax is levied at progressive rates. The tax bands are adjusted annually.

BASIS AMOUNT IN EUR	RATE	INDEX I.J. 2012
Up tp 5,705	25%	Up to 8,350
5,705 - 8,120	30%	8,350 - 11,890
8,120 - 13,530	40%	11,890 - 19,810
13,530 - 24,800	45%	19,810 - 36,300
over 24,800	50%	Over 36,300

According to Belgian tax law, employers must deduct professional withholding taxes from salaries paid to employees and directors. Self-employed individuals should prepay the personal income tax they estimate will be payable on their income to avoid an increase in tax.

For each income year (for personal income taxes the income year falls together with the calendar year) the Belgian tax resident needs to file an income tax return. In principle it should be filed before the 30th of June of the year following the income year.

Non-residents

An individual who has not established his domicile or the seat of his wealth in Belgium, is only taxable on income received from Belgian sources. Depending of the type of income, the non-resident has to file a non-resident income tax return. The due date is usually put back to September (or later) of the year following the income year. However, in some cases, the paid withholding tax or real estate tax will be final.

CORPORATE INCOME TAX

Resident companies

All Companies, associations and organizations with a legal personality are subject to Belgian corporate income tax if they are engaged in a business or profit-making activity and have their registered office, main establishment or place of effective management in Belgium. However the BITC also sets out a number of exceptions, among which inter-municipal associations. Further there are exceptions to be find under the double tax treaties.

Belgian legal persons that are not subject to the corporate income tax, are subject to another type of tax, namely the tax on non-profit organizations. For each income year the resident companies need to file an income tax return, in principle at last by the end of the period of six months from the date of closure of the financial year. However, the Belgian tax administration can deviate from this rule.

Corporate tax rates

The tax base for corporate income tax is determined on an accrual basis and consists of worldwide business income minus allowed deductions. It is assumed that all income received by a company is, in principle, business income.

As a general rule, business expenses incurred or borne by the company during the taxable period in order to obtain or safeguard taxable business income are considered tax deductible. Expenses are deductible if they are justified properly and if the payee can be identified. Therefore,

the income tax base is based on the financial statements of the company with some adjustments (e.g. disallowed expenses, notional interest deduction, tax losses carried forward, etc.)

The standard tax rate is 33.99% (including an austerity surcharge of 3%).

Under certain conditions (e.g. taxable income does not exceed EUR 322,500 and at least 50% of the shares in the Belgian company are held by one or more individuals) small and medium-sized companies can benefit from a reduced progressive tax rate :

- 24.98% on income up to EUR 25,000;
- 31.93% on income between EUR 25,000 and EUR 90,000;
- 35.54% on income between EUR 90,000 and EUR 322,500;
- (33.99% on income over EUR 322,500).

Non-resident companies

Companies not residing in Belgium can be subject to the Belgian corporate income tax under the condition that they carry on business activities in Belgium trough a permanent establishment (PE). The tax base is formed by the profits attributable to the PE. It concerns the profits resulting from an activity carried out by or trough the PE.

The tax regime applicable to the PE's is mainly the same as that of resident companies. Non-residents also need to file an income tax return. The procedure is similar to the one for the resident companies.

Capital gains and losses

Any capital gain when selling fixed assets is in principle subject to tax. However, if certain conditions are met, this taxation can be spread over time. Besides it, capital gains realized on shares are generally not taxable with respect of certain conditions (including a minimum holding period of one year of the freehold).

On the other hand, capital losses are deductible if they relate to fixed assets used for business purposes. In line with the for mentioned exemption concerning capital gains realized on shares, capital losses incurred on shares are non-deductible, with the exception of certain specific situations (e.g. capital losses due to the entire division of share capital and this to the extent of the loss of paid capital represented by those shares).

Transfer pricing

Transfer pricing (TP)-rules apply to both international and domestic transactions. The concept of TP is based on the rule that companies in the same business group must perform their business transactions "at arm's length". This means that a company must be able to

demonstrate that the prices at which it trades with affiliated companies are comparable to the prices and terms that would prevail in similar transactions between unrelated parties. If a Belgian tax-resident company or a Belgian PE is found not to have transacted business "at arm's length", the Belgian tax authorities can, subject to conditions:

- add to its tax base the advantage granted to an affiliated company (although such permanent tax differences can be offset by, e.g. tax losses);
- challenge the deductibility of tax losses (or other deductions) up to the amount of abnormal or gratuitous benefits received from an affiliated company.

The "at arm's length-criterion" is assessed, based on the facts and circumstances of the transaction in question. It is recommended that taxpayers maintain relevant, comprehensive and reliable information to support their TP-policy. Furthermore taxpayers also have the possibility to request for an advance ruling from the Belgian tax authorities.

The Belgian tax authorities have adopted the OECD TP-guidelines. These guidelines indicate that taxpayers should prepare and retain documentation identifying:

- the legal structure and activities of the group;
- the nature, terms (including prices) and quantities of the relevant transactions;
- the arm's length nature of the prices charged. The company must be able to demonstrate that the prices at which it trades with related parties are comparable to those at which it trades with independent parties.

Notional interest deduction

The notional interest deduction (NID) is a relative new, innovative and powerful measure in international tax law. It enables all companies subject to Belgian corporate tax to deduct from their taxable income a fictitious interest calculated on the basis of their net equity. In line with the idea behind de NID regulation, the 0.5% registration duty on capital contributions has been abolished.

The main purpose of the NID is to reduce the tax discrimination between debt and equity financing. The interest paid in the case of loan capital is deductable, while with equity capital the dividends are taxable. The measures also intend to generate (I) a general reduction of the effective corporate tax for all companies subject to Belgian corporate tax and (II) a higher return after tax on investment. For tax year 2013 (income year 2012) the fictitious interest is 3.0%, for small and medium-sized companies it is 3.5%.

Thin-cap rule

Since the first of July 2012 a general thin-cap rule has entered into force. The new rule prescribes a 5/1 debt-equity ratio. For the purposes of the thin-cap rule, equity is defined as the sum of the taxed reserves at the beginning of the taxable period and the paid-up capital at the end of the taxable period. On the other hand debt is defined as :

- all loans, whereby the beneficial owner is not subject to income taxes, or, with regard to the interest income, is subject to a tax regime which is substantially more advantageous than the Belgian tax regime;
- all loans, whereby the beneficial owner is a member of the same group as the debtor.

It is important to underline that the law foresees that for short term financing transactions realized within the scope of a framework agreement on centralized treasury management, netting can take place for thin-cap purposes between interest paid and interest received, to the extent that they relate to the centralized treasury management. This mitigation does not apply to interest received from banks and group companies which are not subject to corporate income tax or which are located in a tax heaven.

Withholding Taxes (dividends, interests and royalties)

DIVIDENDS: Belgian companies are in principle subject to withholding tax of 25% when paying dividends. However, generally a reduced rate of 21% applies (other reduced rates are possible when certain conditions are met).

Based on the implementation of the EU Parent-Subsidiary Directive of 23 July 1990, in principle a withholding tax exemption applies to dividends distributed by a Belgian tax-resident company, if the recipient company :

- is established in Belgium, another EU Member State, or a state with which Belgium has entered into a double tax treaty that foresees in the exchange of information necessary for the carrying out of the domestic laws of the contracting states;
- has a direct holding of at least 10% in the capital of the Belgian distributing company;
- maintains this holding for an uninterrupted period of at least one year or commits to holding it for a minimum period of one year.

INTERESTS: In principle, interest payments are subject to a Belgian domestic withholding tax of 21%, however Belgian domestic law provides for numerous exemptions. By implementing the EU interest and Royalties Directive, a conditional withholding tax exemption is available on interest payments between two associated companies established in the EU. Companies are associated when :

- one of the two companies has had a direct or indirect holding of at least 25% in the capital of the other ; or
- a third EU tax-resident company has had a direct or indirect holding of at least 25% in the capital of each of the companies.

A uninterrupted holding period of at least one year also has to be respected. Given that it concerns a holding period and not a waiting period, the tax exemption even applies when the one year-period is not reached yet on the moment the payment is made. However the condition still must be fulfilled afterwards.

ROYALTIES: Belgian domestic tax law defines royalties very broadly. This type of income is generally subject to a 15% withholding tax, unless an exemption applies. In the event of a cross-border payment of royalties, the withholding tax rate may be reduced if a double taxation treaty applies or on the basis of the implementation in Belgian tax law of the EU Interest and Royalties Directive.

VARIA: An additional tax of 4% is levied trough the annual personal income tax return, provided that the threshold of EUR 20,020 in dividends and interest is exceeded. Only Belgian taxpayers are subjected.

The extra 4% is only levied on dividends and interest subject to a withholding tax of 21%. To determine whether the additional tax applies, the Belgian tax authorities consider the information:

- mandatorily mentioned by the taxpayer in his tax return;
- transmitted by the "Central Point of Contact" responsible for receiving, mainly form Belgian Banks, information about their customers who receive dividends and interest.

Inheritance and Gift Tax

Inheritance and gift tax is charged on the transfer of assets by inheritance or as a gift. The tax rate varies between 3% and 80%. The rate depends on three factors :

- the value of the assets inherited or bestowed;
- the degree of family relation;
- the competent region (Flanders, Wallonia and Brussels).

Belgian Tax Law foresees certain exemptions and reductions (e.g. free bestowal of family businesses, with respect of certain conditions).

Value-Added Tax

An individual or legal entity whose economic activity consists of supplying goods or services, is subject to value-added tax (VAT). The supply of goods and services within Belgium, the importation of goods into Belgium from outside the European Union, and the intra-Community acquisition of goods in Belgium are all subject to VAT. However, there are certain exemptions. The application of Belgian VAT is limited to those supplies of goods and services that take place in Belgium. In order to determine the place of these supplies, the VAT code stipulates certain rules.

Belgian VAT-law sets out four VAT rates, 0%, 6%, 12% and 21%, the last one being the most commonly used. The amount of tax payable by persons liable to VAT is set off against the input VAT (i.e. VAT paid to suppliers), that way the actual tax burden is carried by the end-consumer. In principle the person liable to VAT must file a VAT return each month. Under certain conditions the VAT return can be submitted quarterly.

A non-resident taxable person who has a permanent establishment for VAT purposes in Belgium, is treated as a resident for tax purposes.

Property Taxes

An immovable withholding tax is imposed on deemed income from immovable property located in Belgium. The tax is levied on the cadastral income of the property at rates ranging from 1.25% up to 2.5%, depending on its location.

In Flanders real estate transfer is subject to a registration fee at a rate of 10% of the tax value of the immovable property. In Wallonia and Brussels the rate is 12.5%.

Double Tax Treaties

Belgium has entered into various agreements with foreign jurisdictions designed to avoid and eliminate double taxation. Most of these treaties are based upon the OECD Model Double Taxation Convention on Income and on Capital.

→ Labour Law

The importance of employment law in Belgium cannot be underestimated. The right to work is a fundamental right which is embedded in the Belgian constitution. It can be explained by the favorable position of the employee that has historically grown since the industrial revolution. Therefore employment law is nowadays extensively regulated in different kind of regulations: Statutes, Royal Decrees and collective bargaining agreements but also work regulation on the company level and individual agreements.

Part of this regulation covers individual employment law (i.e. individual rights of the employees), the other part regulates collective employment law (i.e. joint committee).

Individual employment law

CATEGORIES OF EMPLOYEES: Belgium is one of the few countries who distinguishes different categories of employees according to the nature of their work. So-called blue collar workers work primarily with their 'hands', white collar workers on the other hand perform 'intellectual labour'. This distinction is however out runned: the Constitutional Court has ordered Belgium dispose of this distinction at the latest in July 2013. Since different rules apply for both categories, Belgian employment law will change substantially in 2013.

THE EMPLOYMENT CONTRACT: In principle the mutual consent between parties is sufficient to have a valid employment contract. Even though parties are in principle free to determine

the content of the contract, the contractual terms nonetheless may not conflict with the mandatory provisions of Belgian law. Most provisions which protect employees are deemed to be mandatory and are mainly fixed by statute or by collective bargaining agreement concluded at the level of the industry to which the company belongs. They concern termination of the employment contract, working time, working hours and rest time, minimum wages, annual leave and so on.

Also the requirement of form is in principle free: there is also no legal requirement to receive a written employment contract when it concerns a full time contract for an indefinite period. For all other employment contracts, a written employment contract is required: these are mainly fixed-term contracts or contracts for a defined job of work, for part-time employment, for home working or with a student. In the absence of a written contract in those cases, the employee is deemed to have been hired for an indefinite period.

To qualify an agreement as an employment contract the following elements have to be present: one party, the employee, agrees to work under the authority of the other, the employer, for a definite or indefinite period of time.

The essential characteristic of an employment contract is by consequence the element of authority. In the absence of that element, the parties will not be submitted to employment law and one will conclude to self-employment. The key aspect of such "authority" of the "organizational authority" in the sense that one person is assigned the power to direct another person.

SUSPENSION OF THE EMPLOYMENT CONTRACT: Some facts or circumstances lead to the suspension of the employment contract in which case the employee temporarily cannot deliver work performances but the employment contract still stands without loss of pay (in most situations). In this way the legislator wants to strive to a higher permanence of employment and security. A few suspension grounds are discussed:

- Maternity leaf. Every pregnant woman is entitled to pre and post-natal leave. The duration of pre-natal leave is 6 weeks (and 8 weeks when multiple birth). Moreover from the 7th day before the expected date of childbirth, the employee must cease all activity and the employer may not, under any circumstances keep the employee at work. The post-natal leave is 9 weeks (11 weeks when multiple birth).

- "Absence". Each employee has the right to be absent for family happenings, to fulfill his citizen duties or his civil duties and if he has to appear for the Court. If a child is born for example, the employee has the privilege to be absent for 10 days.

- Career break. To enable a better combination of work and family life, there is a possibility in Belgian law to take a career break. The duration of the career break longs over a whole career from 3 months up until 1 year. The condition to take a career break is a seniority of minimum 12 months.

- Inability to work. If an employee can't do his usual work because of sickness or an accident the employment contract is suspended, with guaranteed salary for a certain period. In order to be entitled to the guaranteed salary, the employee has to give notice immediately of his/her sickness or accident and at request of the employee, must subject himself to a medical checkup.

THE TERMINATION OF THE EMPLOYMENT CONTRACT: Belgian labour law lays down specific regulations and procedures for terminating employment:

- Expiry of the term for fixed-term contracts
- Resolutive/dissolving conditions
- Completion of work in respect of which the contract was concluded for contracts concluded for specific work
- Dismissal
- The agreement of the parties
- The death of one of the parties
- A force majeure having a long-term impact

We will discuss the possibilities for dismissal. The general rule is that an employment contract for indefinite time can be terminated unilaterally at any time by either party.

In first instance employer and employee can end the employment contract by giving notice. Notification of the start date and the length of the notice period must be in writing and sent by recorded delivery mail or served by a bailiff. In the sole case of notice given by the employee, it may be served by a simple letter handed to the employer. The length of the notice period differs between blue-collar and white-collar workers according to whether termination takes place during or after the probationary period and depending on whether notice is given by the employee or by the employer. The calculation of a notice period of a white collar employee can be complex and is often the subject for a dispute. If notice is not given and the contract is terminated immediately, the party terminating the contract is liable to the other party for a severance payment (compensation in lieu of notice).

An employee can also be dismissed for serious cause, immediately and without notice or indemnity. A serious cause is defined as "any fault that makes any collaboration between employer and employee immediately and definitively impossible". In case of a dismissal for serious cause, there are formalities and strict terms that have to be respected.

Collective labour law

Social dialogue is situated on 3 levels in Belgium: national-, sector and company level. On the national level we find the Central Economic Council who is advising the government about social and economic matters. The National Labour Council is also an advising institution on the highest level and negotiates collective bargaining agreements on the highest level.

On industry and sector are the joint (sub) committees (about 150) which enables the workers 'and employers' organizations to agree upon collective agreements on working conditions for the underlying jurisdiction employers and employees to settle bargaining agreement for their specific sector.

Last there is the company level with a Work Council, a Committee for Prevention and Protection at Work and the union delegation.

A Works Council is a joint committee at enterprise level designed to foster consultation and collaboration between employer and employees. Every four year elections take place: the employees of a company elect their representatives in the Work Council. Elections for Works Councils are mandatory in the private sector in enterprises employing at least 100 employees. The Works Council has different tasks as well on technical matters as on economic and social matters. A Work Council has the right to all information about the company which might have impact on the working conditions.

Elections for a Committee for Prevention and Protection are mandatory in enterprises normally employing at least 50 employees. The committee plays an advisory role and is also closely involved in the recruitment and dismissal of prevention officers.

The Union Delegation is a body representing union members at the enterprise level. They defend the interest of the employees regarding industrial relations. The union delegation also has the authority to conclude collective bargaining agreements. The Union Delegation consist out of members who are also employees at the enterprise and who are appointed by the unions or elected.