

Doing Business Guide

Belgium

1st Edition



Van Havermaet
Groenweghe

www.vhgconsultants.be
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Morison International

About This Booklet

This booklet has been produced by Morison International's Belgian member firm Van Havermaet Groenweghe for the benefit of their clients and associate offices worldwide who are interested in doing business in Belgium.

Its main purpose is to provide a broad overview of the various things that should be taken into account by organisations considering setting up business in Belgium.

The information provided is not exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend that anyone considering doing business in Belgium or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

www.vhgconsultants.be

www.vhg.be

Hasselt (head office)

'Kasteel Ter Poorten'

Diepenbekerweg 65

T: +32 (0)11 30 13 50

E: hasselt@vhg.be

Herentals

Diamantstraat 10 bus 201

T: +32 (0)14 59 33 63

E: herentals@vhg.be

Geel

Pas 257

T: +32 (0)14 58 26 39

E: geel@vhg.be

Genk

Weg naar As 27

T: +32 (0)89 35 69 61

E: genk@vhg.be

Brussels

Lambroekstraat 5A (Diegem)

T: +32 (0)2 892 80 70

E: brussel@vhg.be

E: bruxelles@vhg.be

E: brussels@vhg.be

While every effort has been made to ensure the accuracy of the information contained in this booklet, no responsibility is accepted for its accuracy or completeness.

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Getting to Know Belgium

Geography and population

Belgium is situated at the western edge of Europe, bordered to the north by the Netherlands, to the east by Germany and Luxembourg and to the south and the west by France. The coast of Belgium is only a few miles long, but the city of Antwerp is one of the busiest ports on the continent. Although its surface area of 30,528 km² makes it a small country, its location has made it the economic and urban nerve centre of Europe. Brussels is the national capital, as well as being the headquarters of the European Union (EU).

The total population is approximately 11 million. Most Belgians live in urban areas, 40% of them in five major cities - Brussels, Antwerp, Liège, Charleroi and Ghent each of which has a population of at least half a million inhabitants. Other big cities are Bruges, Hasselt, Leuven and Namur.

Belgium is further divided into 10 provinces and 589 communes.

Belgium has three official languages: Dutch is spoken by the Flemish people in the region of Flanders (60% of population), French is spoken by the Walloons in the region of Wallonia (30% of population) and German in a small area situated in the east of Belgium. The capital region of Brussels is officially bilingual Dutch/French (10% of population).

Government

Belgium has been a constitutional parliamentary monarchy since 1831. The authority to govern Belgium is shared by King Philippe of the Belgians and the government, a bicameral Parliament led by the Prime Minister and consisting of a Senate and a Chamber of Deputies. Their powers are defined by the constitution, which guarantees a democratic process. Voting is compulsory.

The country has evolved into a federal state consisting of Flemish, Brussels and Walloon communities and regions to which many of the national powers have been transferred. The federal state retains important areas of responsibility, including foreign affairs, defence, justice, social security, key sectors of public health and domestic affairs.

Legal system

Belgium is a federal state, with a civil law system, and is a member of the EU – three qualities that explain the legal system Belgium has adopted. Based upon the Napoleonic Code, the Belgian law system is comparable with the French system, and is subject to continuous modification under the influence of international regulation as well as internal laws.

The court system has not changed much and still closely resembles the French system. There are four levels of ordinary courts:

1. The Police (criminal) and Justice of the Peace (civil) courts are for the lowest level offences, such as small felonies or conciliation matters;

2. The normal starting level is the Court of First Instance (civil and criminal), known as the Correctional or Juvenile court in criminal matters. Very recently, specialised tax chambers were added to the formal organisation of the Courts of First Instance. Commercial courts have lay judges alongside professional magistrates, and social law cases appear in the Labour Tribunal;
3. Large offences appear before the Court of Assizes, the only Belgian court with a jury. Appeal level is the Court of Appeal, where civil, criminal and commercial matters are dealt with. The Labour Court is a specific appeal court for social law cases coming from the lower labour Tribunals;
4. Finally the Court of Cassation is the highest appeal level, dealing only with points of law; as with the French system, no new facts can be brought before this court.

4	Court of Cassation		
3	Appeal Courts	Labour Courts	Assize Courts
2	First Instance Courts	Labour Tribunals	Commercial Courts
1	Justice of the Peace Courts	Police Courts	

Judicial review as such belongs to the ordinary courts, but administrative redress is possible before an administrative court. The Council of State is the highest administrative court.

Currency, time zone, measures and weights

Belgium is 1 hour (2 hours in summer) ahead of Greenwich Mean Time (GMT).

The unit of currency has been the euro (EUR/€) since 1 January 2002. It replaced the Belgian franc (BEF) at a parity of BEF 40.34 = €1.

Like all other continental European countries, Belgium uses the metric system of measurement (gram, metre, litre, degrees Celsius).

Transport

Belgium is well served by all transport modes:

Road

The Belgian motorway system is modern and well-developed. Until recently, every kilometre of highway was lit all night (which made Belgium especially visible from space). Now only street lights of major interchanges are kept on at night. Except for some tunnels, all highways are toll-free. Seven international expressways connect the country to the French, German and Dutch motorways. The proximity of the Eurotunnel (linking the continent to the UK) is an additional asset;

Railway

Belgium's railway network is one of the most concentrated in the world and is a member of the International Union of Railways;

Air

Brussels National Airport (located in Zaventem) offers a range of intra-European and international flights. Thanks to permanent upgrading, the activities of the regional airports of Charleroi, Liège, Antwerp and Ostend are expanding, with growth both in freight and passenger traffic. Brussels airport is also well-connected with other European international airports such as Paris, Amsterdam, London and Frankfurt;

Water

Belgium offers world-class water transport facilities with the port of Antwerp. Rivers and canals extend across the country, establishing a highly developed inland waterway system with connections to the main rivers and canals of neighbouring countries. The ports are fully integrated with the road and rail networks.

Banking system

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

The framework for Belgian banking law and capital adequacy requirements is set by the EU. As a result, banks from other European Economic Area Countries (EEA-countries) can set up in Belgium on the basis of home-country supervision with a minimum of formalities. This 'single-passport' arrangement can also be used by non-EEA banks that have a full banking licence in another EU country.

The most widely represented banks are BNP Paribas Fortis, ING and KBC (or CBC) but all of the main foreign banks - such as UBS, Deutsche Bank and J.P.Morgan Chase - are also well represented.

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

Economy

General economic overview

Belgium has two primary economic features. As one of the first industrialised countries in Europe, it maintains a strong manufacturing base, but has also developed toward an economy founded on technology and services. The second important feature is the openness of the Belgian economy, reflecting its geographical position and the vital importance of foreign trade.

The economy benefits from Belgium's central geographic location, highly developed transport network and diversified industrial and commercial base. Industry is concentrated mainly in the Flemish area in the north, although the government is encouraging investment in the southern region of Wallonia. With few natural resources, Belgium imports substantial

quantities of raw materials and exports a large volume of manufactured goods, making its economy dependent on the state of world markets. About three-quarters of its trade is with other EU countries.

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

Furthermore, it is one of the pioneers of the EU. The EU is now established as a single global trading area with no internal tariffs and with common standards applying to virtually the full range of commercial life.

Belgium is also a founding member of the General Agreement on Tariffs and Trade (GATT), now known as the World Trade Organisation.

Intellectual property

Intellectual property such as patents, trademarks, copyrights and industrial designs and models are legally recognised in Belgium. The holder of the recognised intellectual property can enjoy exclusive exploitation rights. By way of reparation for abuse of a patent or trademark, the holder may be awarded damages and obtains an injunction to prevent continued abuse.

Registration of a patent can take place on the basis of various legal instruments: these can be national (Belgian Patent Act), European (European Patent Convention and Unitary Patent Regulation) or international (Patent Cooperation Treaty).

Trademark protection in Belgium can be obtained via the Benelux Trademarks Act, the European Community Trademark system and the International Madrid Agreement. The Benelux Trademarks Act provides for unified registration and protection of trademarks throughout Belgium, Luxembourg and the Netherlands via a single common trademark service. Trademarks can co-exist within the region if the trademark holder has knowingly tolerated the use of a previously registered trademark for five years. The original holder of the mark forgoes any rights in failing to object to the registration of the mark for a second time.

Copyright is protected by domestic law, which also covers 'related rights', including the rights of performers, producers and broadcasters including written, audio and visual works. The law covers written, audio and visual works. Economic rights under copyright law are valid for 70 years from the death of an author. This law also extends protection to software programs, but unlike other copyrights, protection is automatically vested in the employer unless otherwise agreed.

Types of Business Organisations

Principal forms of business entities

Belgian law provides for a variety of corporate entities which benefit from some form of legal status. The choice of form will often depend on the nature of the business, the objectives of the respective investors/shareholders and the size of the investment at hand.

Foreign companies generally use a subsidiary or a branch.

Belgian company law distinguishes several forms of companies with legal personality:

- Private limited-liability company (besloten vennootschap met beperkte aansprakelijkheid – BVBA; société privée à responsabilité limitée – SPRL);
- Public limited liability company (naamloze vennootschap – NV; société anonyme – SA);
- General partnership (vennootschap onder firma – VOF; société en nom collectif – SNC);
- Limited partnership (gewone commanditaire vennootschap – Comm. V; société en commandite simple – SCS);
- Partnership limited by shares (commanditaire vennootschap op aandelen – Comm. VA; société en commandite par actions – SCA);
- Cooperative limited-liability company (coöperatieve vennootschap met beperkte aansprakelijkheid – CVBA; société cooperative à responsabilité limitée – SCRL).

Because they are most commonly used, has focused on the incorporation of an NV (public limited liability company) and a BVBA (private limited liability company), primarily setting out the differences between these company types.

Apart from the difference in share capital, the main difference between an NV and a BVBA is that the latter is predominantly based on a 'relationship of trust' among the associates. That is the main reason why the shares of a BVBA are registered shares and their transferability is restricted (e.g. the other shareholders have pre-emptive rights to purchase any shares). There used to be a possibility for limited liability companies to issue bearer shares, so shareholders could remain anonymous. However, as of 2008 this is no longer possible.

The BVBA is the preferred organisational form for small (mostly family-owned) firms and small management companies. Public subscription is not allowed to increase or form capital. Another reason to choose a BVBA is its option to have only one shareholder and one director, foreign investors do not normally use this form.

Formalities for setting up a company

A company can be incorporated by direct creation or by public subscription. In both cases registration with a public Belgian notary is required and a financial plan must be submitted prior to incorporation.

Once the company is incorporated it has to be registered with the Central Register of Commerce. A company number will be issued, which should also be activated as a VAT

number (if applicable). The number must be used in all communications with other businesses or individuals.

A company planning to issue financial instruments to the general public (i.e. 50 or more persons), has to register with the Financial Services and Markets Authority (FSMA). Special procedures apply for banks, insurers, and leasing companies.

Forms of entity

Belgian NV/SA (Naamloze vennootschap/Société anonyme)

Share capital

The minimum share capital for an NV is €61,500, which must be paid up to the minimum level. If the capital is higher, only one-quarter needs to be paid up, provided the minimum of €61,500 is met. A business plan will have to be deposited with the public notary who handles the company's registration, indicating that the capital will suffice for the company to be viable for 2 years. Directors of a company that fails because of an underestimated capital can be held personally liable (despite it being a limited company).

It is possible to contribute capital in other forms, other than cash, however, there are some restrictions. For contributions in kind, it should always be possible to attach an economic value to the contribution, this is except where the contribution is in the form of provision of services or work for the company, an auditor must always carry out the valuation. Permitted capital contributions are intellectual property, know-how, goodwill, rental or leasing rights, value-adding agreements and non-complete agreements. Intangible contributions in kind must be fully paid up immediately. In other cases, the contributions must be paid up within 5 years.

An NV must accumulate 5% of net profits annually until this legal reserve reaches 10% of the company capital. The reserve may be used to offset losses, but it cannot be distributed as dividends.

Companies must maintain a normal debt/equity ratio. However, this 'normal ratio' is not defined, but a company can never distribute profits if the value of assets after the deduction from profits of the amount allocated to the legal reserve drops below the value of issued share capital, plus the amount of the legal reserve, or the company did not make any operating profit after deduction of losses carried forward and transfers to legal reserves. Consequently, the company must be trading profitably for dividend payments to be permissible.

An NV can have so-called 'authorised capital'. The share capital of the NV can be increased to this amount by a decision of the board of directors; an extraordinary general meeting of shareholders is therefore not required.

Shares

Shares of an NV can be nominal (registered in the shareholders' register) or dematerialised (booked on an account, e.g. with a bank).

Shares of an NV are, in principle, freely transferable, although the articles of association can provide limitations.

An NV can, besides shares, also issue profit-sharing certificates, (convertible) bonds or warrants.

Shareholders

An NV must at least have two shareholders and there are no residence or nationality requirements.

Board of directors

An NV is required to have at least three board members, two board members are only allowed when a company only has two shareholders. As with shareholders, there are no residence or nationality requirements and both legal and natural persons are eligible. When a company is appointed to the board, one individual permanent representative must be designated to represent the company on an ongoing basis. Listed companies are required to have at least three independent directors who must be formally consulted before any major decision is taken. Directors are individually liable for management errors and should take out liability insurance.

Management

The chairman of an NV is appointed by the board. When s/he is in charge of the day-to-day management, s/he is called the managing director. More managers are permitted, as well as managers for special functions. Employees do not need to be represented in management, however, a works council must be set up if there are ≥ 100 employees.

Control

An NV must hold at least one shareholders' meeting each year, at which the directors' management report and the annual accounts are approved. These accounts must be approved within 6 months of the end of the financial year and published within 30 days of approval. No special attendance quorum is required for ordinary meetings and resolutions can be voted by majority, although some articles of association may specify attendance and voting quorums.

Belgian BVBA (Besloten vennootschap met beperkte aansprakelijkheid/ Société privée à responsabilité limitée)

Share capital

A Belgian BVBA has a minimum share capital of €18,550. If there are two or more shareholders, at least €6,200 must be paid. When there is only one shareholder, at least €12,400 of the share capital must be paid. Where the share capital is greater than the minimum, 20% needs to be paid, provided the minimum is met. As with a Belgian NV, a business plan must be deposited with the notary public who settles the company's registration, proving that the capital is sufficient for the company to be viable for 2 years. If, within 3 years from the establishment, a company fails and it is deemed to have

underestimated the required capital, the directors can be held personally liable, even though it is a limited company.

It is possible to contribute capital in other forms other than cash, however there are some restrictions. For contributions in kind, it should always be possible to attach an economic value to the contribution. Except where the contribution is in the form of provision of services or work for the company, an auditor must always carry out the valuation. Permitted capital contributions are intellectual property, know-how, goodwill, rental or leasing rights, value-adding agreements and non-complete agreements. Intangible contributions in kind must be fully paid up immediately. In other cases, the contributions must be paid up within 5 years. A BVBA must accumulate 5% of net profits annually until this legal reserve reaches 10% of the company capital. The reserve may be used to offset losses, but it cannot be distributed as dividends.

Profit distribution is not permitted if the value of assets after the deduction from profits of the amount allocated to the legal reserve drops below the value of issued share capital plus the amount of the legal reserve, or the company did not make an operating profit after the deduction of losses carried forward and transfers to legal reserves.

The option of 'authorised capital' does not exist in a BVBA.

Shares

Shares of a BVBA are always nominal (registered in the shareholders' register).

For the transfer of shares in a BVBA, the agreement of at least half of the other partners is needed (representing at least three-quarters of the share capital), although the articles of association can exempt certain acquirers.

A BVBA can, besides shares, only issue debentures, which cannot be converted into shares.

Shareholders

A BVBA can be founded by one or more shareholders. Belgian residency or nationality is not required.

Management

A BVBA can have one or more managers. A distinction is made between a statutory manager and a non-statutory manager.

As the name suggests, a statutory manager is a manager appointed in the articles of association. In principle, such managers can only be dismissed by a decision of the partners or for compelling reasons. However, the articles of association may specify alternative arrangements.

A non-statutory manager is a manager appointed by the general meeting based on a simple majority. In principle, such managers may be dismissed by the general meeting based on a simple majority of votes. However, the articles of association may specify alternative arrangements.

Belgian residence or nationality is not required.

Both legal and natural persons are eligible. When a company is appointed to the board, one individual permanent representative must be designated to represent the company on an ongoing basis.

These managers are personally liable for management errors, they should therefore take out liability insurance.

Control

A BVBA must hold at least one shareholders' meeting each year, at which the directors' management report and the annual accounts are approved. These accounts must be approved within 6 months of the end of the financial year and published within 30 days of approval. No special quorum is required for ordinary meetings, and resolutions are by majority vote. Special requirements for a quorum (50% of the registered capital) and a majority (75% of the vote) apply to extraordinary meetings, which may be called at any time by the managing director, the statutory auditor or shareholders representing at least 20% of the capital to consider amendments of the statutes, a capital increase or decrease, merger or dissolution, or modification of the company's objects. Existing shareholders have preferential rights in the event of a capital increase.

Branch of a foreign corporation

A foreign corporation may set up a branch in Belgium. Branches are governed by the same rules as Belgian companies for their management and operations in Belgium, although the authorities may be reluctant to grant investment incentives to branches. Branches in Belgium are subject to corporate income tax and like Belgian companies, branches are taxed at the standard rate of 33.99%.

A foreign company setting up a branch in Belgium must register this branch with the Crossroad Bank of Enterprises (CBE) by submitting the following files:

- A certified translation of statutes of the foreign company
- A statement of the board of directors to set up a Belgian branch
- Evidence of an appointed legal representative
- The powers delegated to this legal representative
- The address and activities of the Belgian branch
- The most recent annual and consolidated financial statements of the foreign head office
- Companies from outside the EU must indicate which jurisdiction they fall under and their registered capital.

For VAT and social security purposes, a branch must also obtain a company number and a CBE listing before commencing business. Annual obligations include submission to the National Bank of Belgium (NBB) of information on profits, directors and auditors, together with the company's annual and consolidated financial statements. A brief statement must be published in the Belgian Official Journal.

Accounting and Reporting

Accounting requirements

All Belgian companies, regardless of legal form, and including branches of foreign companies, must keep accounts and records in accordance with the Belgian Companies Code. The annual accounts of Belgian companies must be drafted in accordance with Belgian Generally Accepted Accounting Principles (GAAP).

The consolidated financial statements of listed companies, however, must comply with the 4th EU Company Directive or International Accounting Standards (IAS), using International Financial Reporting Standards (IFRS) as adopted by the EU. Unlisted Belgian companies are permitted to use IFRS for their consolidated financial statements.

Consolidated statements

Commercial enterprises in Belgium have to file consolidated financial statements if they have one or more subsidiaries.

Exceptions can be made when:

- The company itself is a subsidiary of a parent company that prepares and publishes audited consolidated accounts and a consolidated director's report
- The company and its subsidiaries do not, on a consolidated basis, exceed more than one of the following limits:
 - Annual turnover of €29.2 million (excluding VAT)
 - Balance sheet total of €14.6 million
 - Annual average of 250 employees.

Auditing requirements

The Belgian Company Code requires companies meeting certain criteria to appoint a statutory auditor.

This requirement applies to large enterprises. When meeting more than one of the following three criteria, an enterprise is considered a 'large company':

- Annual turnover of €7.3 million (excluding VAT)
- Balance sheet total of €3.65 million
- Annual average of 50 employees.

Companies with a Workers' Council (i.e. enterprises with 100 employees or more) are always considered as a large company according to the Belgian Company Code and are therefore compelled to appoint a statutory auditor.

The criteria listed on page 11 are considered separately for each company, with the exception of companies that are part of a group required to prepare and publish consolidated financial statements. A Belgian standalone entity, part of a Belgian or foreign group preparing and publishing consolidated annual accounts, is always required to appoint an auditor, regardless of its size.

The audit includes the examination of the financial statements (balance sheet, profit and loss account, disclosures and social balance sheet) and the report of the directors on the economic and financial position.

The statutory auditor is appointed by the general meeting of shareholders and has an unlimited right of oversight and inspection of all the operations of the company.

Filing requirements

Belgian companies must file their financial statements annually with the NBB. These reports must be filed within 6 months of the financial year end and within 30 days after the general shareholders' meeting in this respect.

Foreign companies with a permanent establishment in Belgium are required to deposit the annual account of their head office and consolidated accounts (together with a social balance sheet of the Belgian permanent establishment if it employs personnel in Belgium) with the NBB.

Depreciation and amortisation

Depreciation of business assets must be taken every year, irrespective of the amount of corporate income. Depreciation is calculated from the financial year in which the asset was acquired or produced. Delayed depreciation is not allowed.

Depreciation is calculated on the basis of cost price and the useful life of the asset. The law provides for two methods of depreciation:

- **Straight-line method** - Straight-line depreciation is the usual method. Depreciation periods and rates are normally fixed by agreement between the taxpayer and the tax authorities, although for certain assets rates are set by administrative instruction (e.g. commercial buildings, 3%; industrial buildings, 5%; machinery and equipment, 10% or 33%, depending on type; rolling stock, 20%; intangible fixed assets, 33.3% when relating to research and development, 20% in other cases; knowhow (expertise), 10%)
- **Declining-balance method** - Declining-balance depreciation is generally optional. However, intangible fixed assets, cars and fixed assets that are depreciated by the owner but whose right to use has been transferred must be depreciated on a straight-line basis.

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

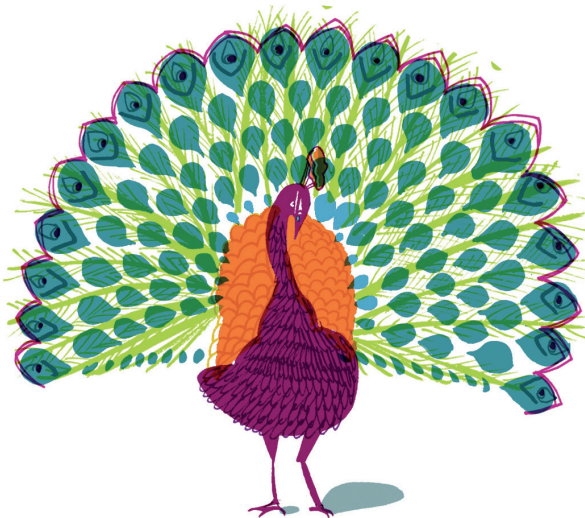
Small and medium-sized enterprises (SMEs) are entitled to a 'full' depreciation in the financial year in which the asset was acquired or produced (i.e. not pro rata temporis) and are also entitled to immediate depreciation of 'additional' costs.

Valuation of inventory

Belgian tax law does not contain specific provisions regarding methods of valuation of inventory. Therefore the rules of accounting law apply for tax purposes. According to accounting law, inventory must be valued at cost or replacement value, whichever is lower.

There are four permitted methods of valuation of inventory:

- **First In First Out (FIFO)** - This method assumes that the first unit in inventory is the first unit sold. FIFO gives a more accurate value for ending inventory on the balance sheet. On the other hand, FIFO increases net income and increased net income can increase taxes owed;
- **Last In First Out (LIFO)** - This method assumes the last item entering inventory is the first sold. During periods of inflation LIFO shows ending inventory on the balance sheet much lower than what the inventory is truly worth at current prices, this means lower net income due to a higher cost of goods sold;
- **Average weighted price** - This method takes a weighted average of all units available for sale during the accounting period and then uses that average cost to determine the value of cost of goods sold and ending inventory;
- **Individual unit method** - This method registers the specific price of every purchase and sale of inventory goods. This method can only be applied if the inventory goods are individually identifiable.



Business Taxation

Corporate income tax

The Belgian corporate tax system is based on the classical double taxation system, which means that corporate profits are fully taxed and distributions from the taxed profits are again fully taxed in the hands of the shareholders (unless the participation exemption applies; see below).

Only resident entities with legal personality are subject to corporate income tax. A corporation is considered to be a Belgian resident if its principal establishment, registered office or place of effective management is located in Belgium.

The most important forms of legal entities are the corporation (SA/NV) and the limited liability company (SPRL/BVBA). Non-resident entities, with or without legal personality, that have a legal form comparable to the above mentioned Belgian entities are subject to income tax on non-residents only insofar they derive certain types of Belgium-source income.

Taxable income

Starting from the business result nine successive steps have to be taken in order to determine the taxable income starting from the financial statements:

1. Profit determination
2. Classification of the profit according to its source (Belgian-source profit, profit from non-treaty countries, profit from treaty countries)
3. Deduction of profit from treaty countries and other exempt profits
4. Deduction of intercompany dividends (participation exemption)
5. Patent deduction
6. Notional interest deduction
7. Deduction of previous losses
8. Investment deduction
9. Deduction of carried forward notional interest stock.

Step 1: Profit Determination

Resident companies are taxed on their worldwide income, less allowable deductions. Taxable business profits are defined as the sum of all profits and gains of whatever description or nature. Companies are deemed to conduct a business by using all of their assets. Basically the profit is determined by the sum of (1) the increase in reserves, (2) the non-deductible expenses and (3) the distributed dividends.

Capital gains on shares

If the shares are held for a period of at least 1 year by an SME, capital gains on shares in a company subject to a normal tax regime are exempt from taxation. Gains on shares meeting

the same conditions realised by bigger companies will be subject to a separate tax rate of 0.412% (without the possibility of other fiscal deductibles).

Capital gains on shares in companies subject to a normal tax regime, but that were held for less than 1 year, are taxed at a rate of 25.75%.

Realised gains on shares in companies that not meet the taxation requirement are always taxed at the normal corporate tax rate of 33.99%.

Rollover relief for gains on fixed assets

A spread taxation in time is granted for gains on fixed assets held for business purposes for more than 5 years and for gains realised in respect of damages, expropriations and similar events. In such cases, the gains will be subject to corporate income tax over the period of depreciation of the reinvested assets if the proceeds are reinvested adequately in depreciable non-financial fixed assets within 3 years (or 5 years for buildings, ships and aircrafts). The amount of depreciation taken on the new assets and corresponding to the amount of the capital gain is taxed as income in the same year the depreciation is taken. The untaxed part of the capital gain will remain exempt only if it remains recorded as a liability in a separate account and is not used as a basis for distribution of profits. If no reinvestment is made within the reinvestment period, the capital gain will be taxed during the year in which the reinvestment period ends; in addition, the taxpayer will be liable for interest on the related corporate income tax.

Provisions

Tax-free reserves for probable and specific charges are permitted under certain conditions prescribed by law and administrative instructions.

Also, tax-free provisions are allowed for bad debts when the losses can be clearly described and when they are justified by special circumstances that have occurred during the tax year.

Non-deductible expenses

Expenses will be deductible only if they are incurred or borne by the company during the financial year in order to safeguard taxable business income. Deductible expenses must be proven by documents. So while all earnings are considered as taxable company income, not all expenses will automatically be deductible as a business expense.

However, deduction of certain expenses is limited by law or completely disallowed, including:

- Personal expenses
- Costs related to company cars (50–100% deduction according to CO₂ emissions)
- Corporate tax
- Certain regional (environmental) taxes
- Penalties
- Restaurant costs (69% deductible).

Step 2: Classification of the profit according to its source

After the fiscal profit is determined, the profit will be classified into one of three categories:

- Belgian profit
- Profit from non-treaty countries
- Profit from treaty countries.

Step 3: Deduction of profit from treaty countries and other exempt profits

After the profit is classified in categories, the taxable profit will be reduced by the profit from treaty countries. Also, other exempt profits (e.g. certain gifts) will be deducted from the profit.

Step 4: Deduction of intercompany dividends (participation exemption)

If certain conditions are met, companies can deduct 95% of their dividends received on domestic and foreign shareholdings from their taxable profits.

The deduction can be applied if the following conditions are fulfilled:

- Minimum participation of 10% of the capital in the subsidiary or a participation with acquisition value of at least €2.5 million
- The shares must be held for a continuous period of at least 1 year
- The dividend-paying subsidiary must be subjected to taxation at rates that are no less favourable than the Belgian tax regime.

When dividends received exceed the amount of taxable profits, companies can carry forward the excess for relief against future profits. However this is only possible for dividends attributable to shares in companies residing in the EU/EEA.

Step 5: Patent Deduction

As an incentive for technological innovation, 80% of the income derived from patents licensed to a related or unrelated party may be deducted from the profit insofar as the payments are consistent with the 'arm's length principle'. The remaining 20% is taxable, which results in an effective tax rate of 6.8% on all patent income.

Eligible patents

- Patents self-developed in a Belgian or foreign research and development (R&D) centre
- Patents acquired (by purchasing, or licence, etc.), provided they are being further developed in a Belgian or foreign R&D centre that constitutes a business department or branch of activities of the company. (SMEs do not have to meet the condition of a qualifying R&D centre.)

Eligible income

- Licence payments
- A portion of the turnover of patented products and services.

Insufficient taxable income, however, will result in a loss of patent income that could not be deducted. The unused part cannot be carried forward.

Step 6: Notional interest deduction

All domestic or Belgian establishments of foreign companies have the possibility to deduct from their taxable income a 'fictional interest'. This deduction narrows the discrimination between funding with equity and funding with loans, as currently, interest paid is deductible for the borrowing company while dividends paid are not. Companies with good solvency ratios are thus able to reduce their taxable base when investing from their own resources.

The notional interest deduction equals a percentage of the equity (including retained earnings), determined according to Belgian accounting law. However some company assets first need to be deducted from the equity. For example: the fiscal net value of own shares held on the balance sheet, participations in other companies, real estate used by directors for personal means.

For fiscal year 2014, the interest is 2.742% and 3.242% for SMEs.

The deduction of notional interest takes place after the patent income is deducted from the taxable base. The unused deduction is not transferable to a later year.

Step 7: Deduction of previous losses

Losses can be carried forward unlimited in time, except when there is a change in ownership that does not meet justified financial and economic needs. But they must be used as soon as there is a taxable profit after steps 1–6.

Losses cannot be carried back.

The deduction of losses of a company involved in certain tax-exempt reorganisations (mergers and divisions) is limited by special rules. In order to counteract transactions whereby a company shifts its profits to a related company (including reorganisations), the law provides that losses are not deductible from the profits to the extent of abnormal or gratuitous advantages received.

Step 8: Investment deduction

SMEs can benefit from an exceptional 4% (one-shot) investment deduction for (calendar) years 2014 and 2015 for assets that have been acquired or produced in these 2 (calendar) years. The investment must be justified within the core business of the company.

The 4% investment deduction cannot be combined with the notional interest deduction and the excess part can only be carried forward for 1 year.

Besides this one-shot deduction for SMEs, there are specific deduction regimes for investments that meet the legal conditions. Some taxable entities can even opt for a spread deduction according to the duration of the depreciation period.

They are not limited to investments made in 2014 and 2015, and they are not limited to small companies.

Specific deduction regimes apply for the following investments:

- Patents
- Environment friendly investments for R&D, energy-efficient investments, smoke exhaust

or aeration systems (hotel and catering industry), charging stations for electrical vehicles

- Investment in safety measures (only SMEs)
- Investments in seagoing ships by companies only receiving profits from navigation.

Step 9: Deduction of carried forward notional interest stock

Since 2013, the notional interest deduction (step 6) of a relevant tax period can only be used to offset the profits of that tax period. The carry-forward of unused deductions to subsequent periods has been abolished.

For companies that still have a 'stock' of unused and accumulated notional interest deduction, there is still a possibility to deduct the notional interest from later profits (limited to 7 years).

Anti-avoidance rules

General anti-avoidance rule

A legal deed or a set of legal deeds may be reclassified by the Belgian tax authorities if the tax authorities show, on the basis of objective circumstances, that there is 'tax abuse'. For purposes of this rule, tax abuse is defined as:

- A transaction by which the taxpayer, in violation of the objective of a provision of the income tax code, places itself outside the scope of application of said provision; or
- A transaction by which the taxpayer claims a tax advantage provided by a provision of the income tax code if the taxpayer obtaining this tax advantage would be contrary to the objective of this provision and if the pursuit of this tax advantage is the primary goal of the transaction.

The burden then shifts to the taxpayer to prove that its choice of the legal deed or the set of legal deeds is driven by reasons other than tax avoidance. If the taxpayer cannot meet this burden, the transaction will be taxed in line with the purposes of the law as if the tax abuse had not taken place.

Thin capitalisation

Although there is no general thin capitalisation rule, Belgium does have two specific rules establishing debt-to-equity requirements:

- 1:1 debt-to-equity ratio applies for financing obtained from individual directors, shareholders and non-resident corporate directors. Interest relating to debt in excess of this 1:1 ratio is recharacterised as a non-deductible dividend
- 5:1 debt-to-equity ratio applies for financing where the beneficial owner (resident or non-resident) of the interest is not subject to tax, or if the income is subject to a tax regime that is significantly more advantageous than the Belgian tax regime; or, and more importantly, the beneficial owner is part of the same group of affiliated companies.

Transfer pricing

When a resident or non-resident taxpayer is involved, three forms of transfer pricing rules apply: recapture of profits, disallowance of deductions and disregard of the transfer of assets.

Profits may be recaptured where between two companies in their commercial or financial relations conditions are made or imposed that differ from those which would be made between independent enterprises. A relationship in this respect can be based on share holding, management or supervision. In addition, all abnormal or gratuitous advantages granted by a resident company to affiliated companies or persons situated in a tax haven may be added back to the taxable income of the resident company.

Interest, royalties and fees paid to a non-resident holding company or any other recipient in a tax haven may be disallowed as deductible expenses for income tax purposes unless the taxpayer proves that the transaction is real and genuine and that the payments are not excessive. The transfer of certain assets (bonds, claims, patents, money, etc.) to a holding company or any other person in a tax may be disregarded by the tax authorities, except if the taxpayer shows that the transaction corresponds to legitimate business needs or that s/he received an actual consideration producing an amount of income subject in Belgium to a normal tax burden.

Corporate tax rate

The basic corporate income tax rate is 33.99% (3% austerity surcharge included).

For companies with taxable income not exceeding €322,500, there is a special progressive tax rate:

- €0–25,000 = 24.98%
- €25,000–90,000 = 31.93%
- €90,000–322,500 = 35.54 %

However, these progressive rates are not applicable to:

- Companies owning participations exceeding certain limits (financial companies)
- Companies whose shares are $\geq 50\%$ owned by one or more companies
- Companies whose dividend distributions exceed 13% of the paid-up capital at the beginning of the financial year
- Companies that do not pay earned income of at least €36,000 to at least one of the directors or active partners (if the taxable income of the company is less than €36,000, the earned income should be equal to the taxable income)
- Companies that are members of a group of companies which includes a coordination centre.

Fairness Tax

With effect from tax year 2014, a new, separate 'fairness tax' of 5.15% was introduced for large companies. This tax is only applicable if during a given taxable period, on the one hand dividends have been distributed by the company, and (part or all) of the taxable profit has been offset against (current year) notional interest deduction and/or carried-forward tax losses. Hence, the fairness tax is not applicable if a company has distributed dividends in a certain year, without using notional interest deduction and/or carried-forward tax losses in that year.

Administration

Tax return

Companies must generally file a tax return within 6 months of the end of their financial year, which need not be the calendar year. Electronic filing of the tax return is compulsory from 2014.

Belgian law does not contain any provisions allowing for the filing of a consolidated return, nor is provision made for the transfer of losses between members of a group. Each company must file a separate return.

Prepayments

Companies must make quarterly prepayments of their estimated income tax liability during the financial year in order to avoid a tax increase.

Failure to make advance payments, results in the imposition of a surcharge (2.25% for assessment year 2014 levied on the total income tax liability).

SMEs, however, will not be subjected to an increase due to lack of advance payments during their first 3 taxable assessment years.

Final payment

Any remaining tax due is payable within 2 months of the receipt of the assessment.

Interest on overdue tax is charged at 7% per year.

Income tax on non-resident companies

At the level of a Belgian branch

When they receive income through a permanent establishment in Belgium and/or income from immovable property in Belgium, non-resident entities, whether legal entities or not, that have a legal form comparable to Belgian entities and do not have their legal seat, main establishment or place of effective management in Belgium are subject to income tax on non-residents.

The calculation of the taxable base for the income tax on non-residents is subject to the same rules that apply to the corporate income tax for resident companies. The tax rates for non-resident companies are the same as those for resident companies.

At the level of a Belgian subsidiary

Belgian subsidiaries of foreign companies are subject to corporate tax in the same way as Belgian companies.

Other income derived by non-residents/withholding taxes

Dividends

Dividends paid by resident companies to shareholders are subject to withholding tax at a rate of 25%. In an international context, however, tax treaties often provide for a decreased rate.

For SMEs, a reduced withholding tax rate on dividends of 20% or 15% (instead of the general withholding tax rate of 25%) was introduced in 2013. The 20% or 15% withholding tax is only applicable on dividend distributions for new ordinary shares originating from cash contributions made as from 1 July 2013. The exceptions to the general withholding tax rule are the following:

- Dividend distributed out of the profits of the second accounting year as from the date of the contribution: 25% withholding tax
- Dividend distributions out of the profits of the third accounting year as from the date of the contribution: 20% withholding tax
- Dividend distributions out of the profits from the fourth accounting year or later: 15% withholding tax.

As a result of Belgium's implementation of the EU Parent-Subsidiary Directive, no tax is withheld on dividends paid to a company established in Belgium or another EU member state that holds $\geq 10\%$ of the company paying the dividends, provided the participation is held for an uninterrupted period of at least 1 year.

Belgium has unilaterally extended the benefit of the directive to parent companies located in non-EU countries provided the country where the parent company is resident has concluded a tax treaty with Belgium that contains an exchange of information provision.

Interests

Interest payments to non-residents are subject to withholding tax at a rate of 25% unless the rate is reduced under a tax treaty or unless a specific law provides an exemption. Domestic law provides for several withholding tax exemptions on interest paid to non-residents, e.g. interest paid by certain listed holding companies or holding companies owned by a listed company, and interest paid by a Belgian bank or other financial institution.

Under domestic law implementing the provisions of the EC Interest and Royalties Directive, outbound interest and royalty payments are exempt from withholding tax, provided that the recipient is an associated company of the paying company and is resident in another member state or such a company's permanent establishment situated in another member state. Two companies are 'associated companies' if one of them holds directly $\geq 25\%$ of the capital of the other, or a third EU company holds directly $\geq 25\%$ of the capital of the two companies.

Royalties

Royalties are also subject to a rate of 25%. The tax is calculated on the gross amount, but reduced by a standard expense deduction of 15%. Royalties paid to qualifying associated EU companies are exempt from withholding tax under the Interest and Royalties Directive.

Payroll withholding (tax/social security)

A payroll tax must be withheld on remuneration and pensions paid to resident and non-resident employees and directors. For the beneficiary, the withheld payroll tax counts as an advance on the personal income tax.

For white-collar employees, the employer's contribution amounts to approx. 35% of the monthly gross salary. For blue-collar employees, the employer's contribution amounts to approx. 41% of 108% of the monthly gross salary. The employee's contribution amounts to 13.07%.

The level of employer contributions varies depending on the size and industry of the company, as well as the wages of the employee.

Social security contributions are deductible business expenses for corporate income tax purposes.

Withholding tax incentive for researchers

80% 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 they have a qualifying academic degree.

In order to benefit from the partial withholding tax exemption, specific formalities must be fulfilled.

Miscellaneous

Tax free mergers and disposals

If the absorbing company is a Belgian resident, assets or shares are exchanged for shares and if the merger is financially and economically justified, than capital gains resulting from these mergers are tax free.

Belgium has also implemented the EU Fiscal Merger Directive into its domestic tax law, providing for a tax-neutral regime for cross-border reorganisations.

Liquidation of the company

As from 1 October 2014, withholding tax of 25% will be deducted at source for distributions that exceed the original paid-in capital. The normal corporate tax rate is levied on profits and benefits up to closing dates. The Parent-Subsidiary Directive may provide for a relief of withholding tax.

Disguised commission tax

Companies are required to pay a secret commissions tax on certain salary, benefits in kind, fees and commissions that have not been properly documented. The same tax applies to certain undisclosed income ('hidden excess gains').

This special tax, the so-called 'disguised commissions tax', which is levied at the rate of 300%, increased to 309% by the austerity surcharge, is however, considered part of the corporate income tax regime.

Real property tax

Annually a levy on income from immovable property is imposed on the presumed annual rental income of owned buildings, industrial equipment and land. In principle, the tax is equal to a percentage of the fictional rental value ('cadastral income') and it varies by region. For the Flemish region the rate is 2.5%; for the Walloon and Brussels region, the rate is 1.25%. Local municipalities and provinces, however, are entitled to levy surcharges.

Although called 'immovable withholding tax', this tax is levied by assessment. It cannot be offset against the regular corporate taxes due, but is deductible as a business expense.

Ruling system

The taxpayer can file a written request for a binding advance ruling on the tax consequences of an intended transaction with a special division of the tax authorities. The request must concern an actual transaction or situation, rather than a hypothetical situation.

All tax issues are open for requests, unless tax law specifically provides otherwise. No ruling will be granted if the relevant activity has insufficient economic substance in Belgium or the transaction involves a tax haven that does not cooperate with the OECD.

In principle, advance rulings are granted for a period not exceeding 5 years unless, in special cases, a longer period is justified. Rulings are no longer binding if the conditions for application are no longer satisfied or if the facts are not described accurately. Rulings are deemed to be revoked when the relevant legislation changes.

Personal Taxes

Taxable individuals

Personal taxes apply to both resident and non-resident individuals.

Residents

A resident is defined as a person who has their residence or centre of economic interests in Belgium. This criteria is evaluated on the basis of actual facts and circumstances. An individual is presumed to be a resident of Belgium when s/he is registered in the National Register of the Population, but this presumption is rebuttable. Married persons are presumed to have their residence at the place of the family household.

Resident individuals are subject to individual income tax on their worldwide income. However, under its double taxation treaties Belgium relieves income from double taxation applying the exemption with reservation of progression method.

Non-residents

Non-resident individuals are defined as persons who have their residence or the seat of their wealth abroad. They are taxed on their income from sources in Belgium, subject to the terms of any relevant double tax treaty.

Some of the deductions or allowances granted to a resident taxpayer may be disallowed for non-residents.

Taxable income

Resident individuals are subject to personal tax levied on the sum of the tax payer's net income from each of the following four different categories of income:

1. Income from employment and business
2. Foreign executives tax status
3. Real estate income
4. Moveable property income.

Income from employment and business

Employment income is widely defined and includes all benefits in cash or in kind received by an individual. Actual expenses owing to employment can be deducted. However a lump-sum deduction is available.

Directors are treated as self employed for tax and social security purposes.

Employee's as well as director's income is subject to monthly withholding taxes at source after deduction of the compulsory social security contributions.

Marital quotient

If one spouse does not earn a professional income or the professional income does not exceed a certain amount, a special tax rule applies to relieve the tax burden. An amount of 30% of the employment income of the other spouse is attributed to that spouse with an absolute maximum of €10,200 (fiscal year 2015).

Assisting spouse

A self-employed taxpayer who receives assistance from their spouse or legal cohabitant can allocate 30% of their net income to the spouse or legal cohabitant, with an absolute maximum of €13,240 (fiscal year 2015).

Foreign executives tax status

Executives posted in Belgium may apply to the Ministry of Finance to temporarily benefit from a special expatriate regime. An application must be made within 6 months following the month the assignment starts. To qualify for the regime, the principal economic interests of the individual must be located outside Belgium and the employee must be hired abroad or be transferred to a Belgian entity.

In short, this system applies to:

- Expatriate executives working in Belgium for foreign branches or foreign companies controlled from abroad;
- Expatriate analysts working in Belgium for scientific research centres of laboratories;
- Expatriate executives working in Belgium for control or coordination offices of companies belonging to an international group;
- Employees with skills which are extremely difficult, if not impossible, to recruit in Belgium;
- Expatriate directors exercising real and permanent functions in the companies mentioned in the first three points above.

Advantages of the foreign executive tax scheme

Reimbursement of expenses

Reimbursements of certain expenses will not be considered as remuneration and consequently will not be taxed insofar as these reimbursements cover additional expenses resulting from coming to work in Belgium.

These reimbursements can be based on lump-sum amounts or be paid directly as reimbursements of specific expenditures. They can pertain both to non-repetitive expenditures and charges, and to repetitive expenditures and charges.

However, the annual total allowance for repetitive expenses is limited to €11,250 if the employee works for a commercial or industrial company and €29,750 if the employee works for a co-ordination centre or a research laboratory centre.

Non taxation of remuneration paid for activities exercised abroad

The main advantage of the special foreign executive taxation scheme is to enable the executives in question to exclude from their taxable income the part of their remuneration corresponding to professional activities exercised abroad.

The total remuneration (after deducting reimbursed expenses) must be broken down into the share corresponding to professional activity exercised in Belgium (taxable) and the share corresponding to professional activity exercised outside the country (not taxable).

The foreign executive and his employer must show that the executive has spent a given number of working days outside the country for professional reasons.

Consequently, it is important for foreign executives to carefully keep all documents and evidence justifying their travel abroad (airplane tickets, hotel bills, receipts for fuel and restaurants, etc.) during the year when they incurred these expenses.

Non-resident status

The executive is considered as a non-resident, even if s/he lives in Belgium. Consequently, any income pertaining to her/his personal fortune often is not taxed at all.

Income from real estate

Whether received by a resident or a non-resident, income from Belgian real estate is always taxable in Belgium.

The taxable income from real estate depends on the purpose for which the real estate is owned. The amount of taxable income from real estate in Belgium is normally an imputed income based on its deemed rental value ('cadastral income'). This holds not only for owner-occupied property, but also for rented property.

If the owner lets the property to a tenant who uses it for business purposes, the rental income is taxable.

Interests on loans for acquiring or maintaining real estate are deductible to the extent of the taxable income of the real estate. In some specific cases, interest is deductible from the global taxable income.

The income from real estate situated in a treaty country is exempt in Belgium, but subject to the exemption-with-progression rule.

Income from movable property

Income from movable property (interests, dividends, royalties, etc.) is generally taxed at a flat rate of 25%. There are some specific exceptions.

This income is usually taxed by way of a withholding tax, which is a final tax. Taxpayers can, however, opt to include this income in their yearly tax return and claim credit for the withholding tax if this is more advantageous.

Income from movable property, incurred outside of Belgium, always has to be included in the tax return.

Miscellaneous income

Income from unusual or occasional activities are taxed separately at fixed rates. This type of income usually consists of awards, subsidies, government annuities, prizes, sub-leasing or the transfer of real estate or personal property, alimony, proceeds from granting of certain rights.

Capital gains

Capital gains from the sale of private assets are generally exempt from tax unless they are of a speculative nature (33% tax rate) or if they arise on business assets resulting from a regular activity of the taxpayer (progressive tax rate on professional income).

Gains from the sale of land less than 5 years after its acquisition are taxed at 33%, or at 16.5% between 5–8 years after acquisition. Gains from the sale of property (unless it is the individual's private residence) within 5 years of acquisition are taxed at 16.5%.

Capital gains from the sale of shares

If they don't have a speculative nature, capital gains realised on the transfer of shares are generally exempt from taxation.

However, gains from the sale of shares in a resident company to a foreign entity outside the EEA are taxed at 16.5% if the seller has owned more than 25% of the company's share capital at any time during the 5 years preceding the sale.

Deductions, allowances and tax reductions

Besides the deductions of actual business expenses incurred during the taxable period, other deductions for expenses may be taken against the aggregate net income:

- 80% of all alimony paid in respect of any support obligation under law
- Interest and capital redemption on a mortgage loan for an owner-occupied dwelling (up to €3,040 for fiscal year 2015, with small increases if the taxpayer has children).

A taxpayer is entitled to a basic allowance. The allowance is calculated on account of her/his personal circumstances. These allowances can climb from €7,070 for single persons to €21,090 for taxpayers with four dependent children.

They are deductible in computing the taxable income.

After calculation of taxes, taxpayers can also benefit from certain tax reductions for specific expenses. For example, a tax reduction of 30% of the expense is calculated for life insurance premiums, personal pension savings plans, expenses aimed at saving energy in a home, expenses related to charitable donations, childcare expenses, investments for protection against fire, and household burglary. These tax reductions are, however substantially limited and specific conditions have to be met.

Tax rates

The following rates apply for tax year 2015 to taxable income:

1. €0–8,680 = 25%
2. €8,681–12,360 = 30%
3. €12,361–20,600 = 40%
4. €20,601–37,750 = 45%
5. €37,751+ = 50%

A communal tax of up to 9.5% of income tax, payable by resident individuals, is charged by towns and municipalities. The communal tax is fixed at 7% for non-residents.

Married couples and legal cohabitants file a joint tax return. Both partners, however, are taxed separately; but the tax assessment is made on aggregated income.

Compliance

The taxable period for individuals is the calendar year (income year).

The tax return usually has to be filed by the end of June, of the year following the taxable period (fiscal year/assessment year). Non-resident taxpayers will have to submit their tax return during the last quarter of the assessment year.

A notice of assessment will be sent by the tax authorities before 30 June of the second year following the income year.

Taxes due will have to be paid within 2 months after receipt of the tax assessment.

Other taxes

Registration duties

The rate of registration duty depends on the nature of the transfer and the type of property transferred. The main registration duties are imposed on the sale of real property, the rental of real property, the installation of mortgages and similar rights.

In the Flemish region, taxation on real estate amounts in general to 10% (12.5% in the Brussels or Walloon region).

No registration duties are levied on the formation or increase of a company's share capital.

Inheritance and gift tax

Belgium levies taxes both on gifts during lifetime and on transfers of property after death.

All donations of moveable and immovable assets are subject to gift duties. The duty is calculated on the market value of the donated goods.

The rates differ according to the region where the donor has their residence, and the kinship between donor and receiver.

Gift tax rates vary between 3–80%. Certain donations can be made tax free (gifts from ‘hand to hand’ or bank gifts). Should the donor die within 3 years from the date of this non-enacted gift, the gift will still be subject to inheritance tax.

After a death, a tax known as succession duty is paid when the assets are transferred from a deceased person to their heirs. The amount paid as succession duty depends on the value of the estate and the degree of the relationship between the deceased and their heirs. These rates are set by the regions. They vary according to the place in which the deceased had their fiscal residence.

Taxes range from 3–30% for spouses and direct descendants in the Walloon region and the Brussels region, and 3–27% in the Flemish region. In the Flemish region, no inheritance tax is due when the family home is inherited by the spouse or the legal cohabitant of the deceased. Higher rates (up to 80% in Wallonia and Brussels, and 65% in Flanders) apply to more distant relations and unrelated beneficiaries.

Real estate tax

Owners of real estate pay a real estate tax, calculated on the deemed rental value (‘cadastral income’), at a rate that varies between 25–60%, depending on the local authority area where the property is located.

This tax is not deductible from personal income tax.

VAT (Value Added Tax)

VAT is due from taxpayers in the exercise of their business activities on the delivery of goods and services in Belgium. Also, VAT is due on goods imported from countries outside the EU, on goods coming into Belgium from other EU member states and on some services purchased abroad.

The VAT is collected through a system whereby the taxable person who supplies goods or services, pays tax periodically at fixed rates on the market value of the goods and services supplied by her/him; This periodic payment by the taxpayer is computed by applying the appropriate rate of VAT to the consideration charged for each good and service supplied by her/him during the declaration period and by reducing this amount by the VAT which has been charged to the taxpayer during the same period for goods and services received by her/him and goods imported for his use.

Taxable persons

A taxable person is any person (an individual or a legal entity) whose economic activity consists of performing, in a regular and independent manner, with or without profit motive, on a principal or an accessory basis, supplies of goods or services as referred to in the law, wherever this economic activity is carried out.

Taxable transactions

VAT applies to following transactions:

- Supply of goods
- Supply of services
- Import of goods
- Intra-community acquisition of goods.

Many exemptions apply; a special exemption applies in the case of the transfer of a whole business, or a branch of a business, to a taxable person who is, partially or totally, entitled to deduct input VAT.

Exports and intra-community supplies (i.e. supplies to persons affecting a taxable intra-community acquisition) are also exempt. However, they do not result in the loss of deduction for input VAT.

Belgian law also provides VAT exemptions for the following:

- Supply of immovable property not qualifying as a new building (when subject to registration duties)
- Rental of immovable property
- Services for social purposes – such as hospitals, doctors, dentists

- Scientific and cultural activities
- Insurance transactions
- Banking and financial transactions – such as deposit and acceptance of funds, credit operations, etc.

Place of taxable transaction

Goods sold within Belgium are subject to Belgian VAT.

Goods imported into Belgium or transported from within the EU are also subject to Belgian VAT, while goods exported outside the EU or transported into the EU are normally not subject to VAT in Belgium.

In general, services are subject to Belgian VAT when the supplier is established in Belgium. Business-to-business (B2B) supplies of services are taxed in the country where the buyer is located. However, there are some exceptions to this rule (e.g. services relating to real estate).

Registration

When a person (individual or legal entity) is subject to Belgian VAT, they must register to obtain a Belgian VAT registration number. Taxable persons established in other EU member states are no longer obliged to appoint a VAT representative, although it is still possible and could be beneficial in certain circumstances. However, for non-EU taxpayers this is still required.

Taxable persons with a fixed establishment in the EU, who need to be registered in Belgium for VAT purposes, can opt for a direct registration; or they can opt for a registration via the appointment of a VAT representative under an individual VAT number. Both systems have advantages and disadvantages.

However, if turnover from taxable supplies does not exceed €15,000 in the preceding calendar year, there is no obligation to register.

VAT group system

Under a grouping regime, separate VAT taxable persons may be treated as a single VAT-taxable person, to the extent that they are established in Belgium and closely linked. Companies in a VAT group may invoice other Belgian companies in the group without VAT.

Establishing a VAT group can result in significant administrative simplifications and cost savings.

Rates

- Standard VAT rate: 21%
- Reduced 12% VAT rate: applies to supplies of certain goods and services – such as phytopharmaceutical products, margarine, (inner) tubes, pay TV, social housing and restaurant services (not beverages)

- Reduced 6% VAT rate: applies to supplies of goods and services considered basic necessities – such as food and pharmaceuticals, works of art, passenger transport, copyright, concerts and exhibitions, hotels and camping
- Reduced 0% VAT rate: applies, for example, to newspapers, journals and magazines of general interest, issued at least 48 times a year, and recycled goods or products.

VAT returns

In principle, VAT returns have to be filed on a monthly basis.

However, if the taxpayer's annual turnover does not exceed €2.5 million and their intra-community transactions remain below €50,000 per quarter, they can file the VAT returns on a quarterly basis. In that case, monthly prepayments have to be made. The filing of VAT returns and the payment of VAT due have to be made no later than the 20th of the month following the VAT return period (monthly or quarterly).



Employment and Personnel

Employment legislation

Belgian employment legislation includes laws on the terms of employment and laws on health and safety measures. Although many of these regulations originate from converting EU law into Belgian domestic law, many have their roots in collective agreements. The government ratifies these agreements to give them force of law.

There is no legal requirement to receive a written employment contract when it concerns a contract with full-time work for an indefinite period. In this case, a verbal agreement is sufficient and the mandatory provisions of the Belgian law are applicable. For all other employment contracts (such as a contract for part-time work, a contract for a definite period of time, etc.), a written contract is required. In the absence of a written contract, the employment is deemed to have been hired for an indefinite period.

Works councils are created in companies that have an average of ≥ 100 employees on their payroll. The council meets on a monthly basis and must be provided with information on the company's performance and productivity. Companies with an average of 50 employees must have a Committee for Prevention and Protection at Work (CPPW), an elected body that consults with the employer on health and safety issues.

Both employees and employers are represented, but not necessarily in equal numbers. Social elections take place every 4 years.

Works councils' and CPPW's responsibilities are mostly informative and consulting, although they do have decision making powers on a few matters. For example: work regulations, including weekly and yearly work rosters.

On average, employment legislation lays down a maximum of 38 working hours per week. Shorter weeks are possible. Flexible working hours can be negotiated between employer and employees and form part of a collective agreement. In this case, the maximum working hours cannot exceed 9 hours/day and 45 hours/week. Overtime hours are permitted in certain cases, but total hours must not exceed, on average, 11 hours/day and 50 hours/week.

Hourly pay is increased by 50% (100% on Sundays and public holidays) for hours worked in excess of 9 hours/day.

In most cases where the normal limits on work time may be exceeded, compensatory rest must be granted to ensure that the average weekly work time of 38 hours is complied with in any given period.

The statutory annual paid holiday period is based on the number of days worked in the previous year. The annual leave entitlement is 20 days, based on a 5-day working week plus public holidays. The holiday allowances of blue-collar employees are paid by a holiday fund.

Remuneration

Under the general principle of 'the freedom of contract', the remuneration can be freely determined by the contracting parties.

Employee's wages will often include one or more of the following elements:

- Gross salary, paid monthly for white-collar workers and twice monthly for blue-collar workers
- Double holiday pay
- A year-end bonus, depending on the applicable Joint Committee or the arrangements at company or individual level
- Eco vouchers, depending on the applicable Joint Committee
- Certain benefits in kind; these are usually subject to a favourable system for the calculation of social security and tax contributions (e.g. luncheon vouchers, premiums for group insurance, company car, hospitalisation insurance, etc.)
- An annual bonus, calculated on the basis of financial or other targets achieved by the employee
- An employee's share in profits generated by the company during the year.

Visas and permits

Nationals of the European Economic Area (EEA) require a residence permit if they are in Belgium for a period of >3 months. They do not need a work permit. All others require a work permit and a residence permit. The rules on work permits are less strict for executives and highly qualified persons.

Before taking up employment in Belgium, any person needing a work permit must obtain authorisation for temporary residence through a Belgian embassy or consulate-general in their home country, or from the diplomatic representation of a country authorised by the Belgian government to act on its behalf where it has no independent representation.

The Belgian law is in principle very strict on work permits, which are usually only granted if one can prove that there is a shortage on the Belgian/European labour market.

LIMOSA (Cross-Country Information on behalf of Migration Research in Social Administration) notification

This is a duty of prior notification in place since 1 April 2007 for posted (seconded) employees and self-employed persons who are temporarily or partially employed or established in Belgium but who normally work in one or more countries other than Belgium or who are recruited in a country other than Belgium. This notification has to be made by the foreign employer or the foreign self-employed person via the website of the National Social Security Office (NSSO) or the National Institute for the Social Security for the Self-Employed before actually commencing work in Belgium.

There are certain exemptions from this obligation, mainly depending on the duration and the nature of the activities in Belgium.

The LIMOSA tracking system aims to monitor foreign business presence in Belgium. Furthermore it allows the Social Inspection to easily trace foreign nationals in Belgium and verify their compliance with other obligations such as the work permit.

Formalities prior to employing personnel in Belgium

Immediate declaration of employment (DIMONA)

With this declaration, the employer informs the NSSO of the recruitment or departure of an employee at the company. Each employee is allocated a personalised DIMONA code which instantly provides the social security organisations with information about the employee and the employer.

The declaration of employment must be made no later than the moment the employee starts work under the Belgian social security regime. The end of employment declaration must be made no later than the day following the end of employment.

Work accident insurance

The employer must take out statutory insurance for all her/his employees subject to Belgian social security. The statutory insurance covers accidents which occur at work and those which occur during the journey between home and work and back. It covers all activities set for the employee by the employer.

This obligation applies as from the first day of employing the first employee. Retroactive coverage is not permitted.

Health and safety service

All employers are obliged to promote the welfare of the employees in their company. This involves risk prevention, measures for collective and personal protection and also employee training and the provision of information to employees.

Employers must consult an internal or external service for prevention and protection at work to identify the risks facing employees. Its task is to make a risk assessment and organise medical supervision for employees. The employer is also obliged to appoint a minimum of one health and safety advisor (for companies with <20 employees, this role can be taken on by the employer).

Register with the tax administration

All new employers must register with the office for direct taxes in order to satisfy the formalities associated with professional withholding tax. This professional withholding tax is retained at source on employees' salaries.

Membership of an annual holiday fund

From the moment an employer employs a blue-collar worker, s/he must join an annual holiday fund. The employer must join either the annual holiday fund for her/his business sector, or, if there is none, the National Holiday Allowance Office (ONVA). The role of the annual holiday fund is to pay the holiday allowance of the blue-collar workers concerned. If the employer only enlists white-collar employees, there is no requirement to join an annual holiday fund.

Work regulations

Work regulations are compulsory when a company has employees. The work regulations contain a number of specific provisions relating to salary and employment conditions as applicable within the company. These regulations include full-time and part-time work schedules, disciplinary sanctions, annual holiday dates, etc. The work regulations can only enter into force after consultation and information of the employees. Each employee as well as the social inspection must receive a copy of these regulations.

Suspension of employment contract

Under certain circumstances, the execution of the employment contract may be suspended. While these circumstances persist, the employee is no longer required to provide her/his services; however, the employer is still required to pay her/his remuneration, at least during a set period.

The following circumstances justify a suspension of the employment contract:

Official public holidays

There are 10 public holidays each year which an employee is not required to work. The employer is still required to remunerate them for these days off. Public holidays occurring on a Sunday or a day of normal inactivity within the company have to be replaced by a normal day of activity within the company. The official public holidays are:

- New Year's Day (1 January)
- Easter Monday
- Labour Day (1 May)
- Ascension Day
- Whit Monday
- National Holiday (21 July)
- Assumption Day (15 August)
- All Saints' Day (15 August)
- Armistice Day (11 November)
- Christmas Day (25 December).

Annual vacation

In the private sector, the number of vacation days to which an employee is entitled, is determined by the number of work days and the work time an employee has performed during the previous year. A full year of work (5 days/week, full time) creates an entitlement of 20 vacation days the next year.

Periods of incapacity for work

When a white-collar employee is unable to work, s/he is entitled to be remunerated by the employer for the first 30 days of incapacity. Blue-collar employees are guaranteed remuneration for the first 7 days, followed by 7 days at 85.88% of the normal remuneration. The employee is also entitled to a percentage of their remuneration from the 15th to the 30th day of incapacity, likewise from their employer.

Incapacity for work exceeding this period results in an allowance from the employee's health insurance fund.

Termination of the employment contract

The following causes can end an employment contract:

- Fixed term contracts will end automatically when they have reached the agreed end date
- Contracts concluded for a specific type of work end on completion of this assignment
- A written mutual agreement between the employee and employer
- Force majeure having a long term impact or upon the death of the employee
- Immediate termination of the employment contract without notice or severance pay if there is a severe fault; in which case a highly strict procedure is to be followed
- Termination by notice by either the employer or the employee.

Termination by notice

A contract concluded for an indefinite period can be terminated at any time by both parties by serving notice. A written notice is given in which the starting date of the notice is mentioned, as well as the duration of the notice period. The notice period will start on the Monday following the week during which it was notified.

Both employer and employee can also terminate the employment contract with immediate effect ('breach of contract'). In this case, severance pay is due by the party breaking the contract, corresponding to the salary that should have been paid, in case the employment contract was ended by a notice period.

Motivation for the termination

As of 1 April 2014 the employer is required to provide a motivation for the termination of the employment agreement to the employee, in case the employee requests for such

motivation. If the employer does not provide this motivation, s/he will be held eligible for a lump sum fine, payable to the employee, of 2 weeks' salary. If the employer provides a motivation, the employee could claim that the termination of the agreement was obviously unreasonable, in which case s/he could claim an indemnity for the amount of 3 to 17 weeks salary. The employee bears the burden of proof. If the employer fails to provide a motivation, the burden of proof regarding the obvious unreasonable termination of the agreement will lay with the employer.

Employees protected against termination

Many categories of employees carry an extra protection against termination of their employment contract, (e.g. a pregnant employee, an employee representative in works council, etc).

The employer has the ability to terminate their employment contract at any time. However, proof has to be provided by the employer that this termination is based on other reasons than the actual reason these employees are protected (e.g. pregnancy, membership of the work council, etc). In some cases the employer is required to follow a specific procedure (before the labour court).

New rules for calculating the notice period as of 1 January 2014

Following a decision by the Constitutional Court in 2011, the Belgian legislator had to end the difference in the way it treats blue-collar and white-collar workers on account of the notice period in case of termination. The court had found the relevant legal provisions to be discriminatory.

The solution introduces a new way to calculate the notice period for all employees from 1 January 2014. As expected, blue-collar workers will see their notice period (or severance pay) increase significantly, while white-collar workers will see theirs decrease.

The length of the new notice periods depends solely on the seniority of the employee. Age, salary levels and the employee's position will no longer influence the termination package. High earners are treated the same way as other employees. However, the new regime does not prevent employers and employees agreeing more favourable terms on an individual or even company level.

For the determination of the applicable notice period under the new rules, two distinct periods will be taken into account: the period before 1 January 2014 and the period as from 1 January 2014. The first part of the notice period will be determined according to the legal, statutory and conventional rules which apply to the employee concerned on 31 December 2013. This means that (the first part of) the notice period needs to be set as if the employment contract would have been terminated on 31 December 2013. The second part of the notice period is calculated based on the seniority acquired by the employee as of 1 January 2014. For this second part, the new notice periods will apply, as shown in Table 1.

Table 1. Notice periods applicable from 1 January 2014.

Seniority (as from 1 January 2014)	Notice period (weeks)		Seniority (as from 1 January 2014)	Notice period (weeks)	
	Notice by employer	Notice by employee		Notice by employer	Notice by employee
0–3 months	2	1	8–9 years	27	13
3–6 months	4	2	9–10 years	30	13
6–9 months	6	3	10–11 years	33	13
9–12 months	7	3	11–12 years	36	13
12–15 months	8	4	12–13 years	39	13
15–18 months	9	4	13–14 years	42	13
18–21 months	10	5	14–15 years	45	13
21–24 months	11	5	15–16 years	48	13
2–3 years	12	6	16–17 years	51	13
3–4 years	13	6	17–18 years	54	13
4–5 years	15	7	18–19 years	57	13
5–6 years	18	9	19–20 years	60	13
6–7 years	21	10	20–21 years	62	13
7–8 years	24	12	As of 21 years	+ 1 week per started year of seniority	13

Social security

The Belgian social security system is based on the payment of social contributions on work income.

Employers and employees

For white-collar employees, the employer's contribution amounts to approx. 35% of the monthly gross salary. For blue-collar employees, the employer's contribution amounts to approx. 41% of 108% of the monthly gross salary. The employee's contribution amounts to 13.07%.

The above amounts vary depending on the size of the company, and under certain conditions the employer may also benefit from reduced social security contributions, e.g. the reduction for the first five employees within a company registered as a 'new employer'. These reductions will go up to €1,500 per quarter for at least 5 quarters for the first employee.

Social insurance secures income in case of unemployment, pension, sickness or work-related accidents and illness; it also provides benefits for health care and family allowances.

Attention must be given to the EU social security regulations and to bilateral social security treaties to ascertain whether foreign employees are subject to Belgian social security law.

If the EU social security regulations are not applicable and there is no social security treaty between the country of origin and Belgium, then Belgian social security law will apply to a foreign employee working in Belgium and affiliated to a Belgian company.

Self-employed

Self-employed persons pay their social security contributions in quarterly instalments to the social insurance fund to which they are affiliated. The social security contributions are a lump sum minimum amount, or a percentage calculated on the basis of the annual net taxable professional income.

The social security contributions of a starting self-employed person are, for the first 3 complete calendar years, calculated on the income earned in the year itself. As of the fourth full year as a self-employed person, the contributions are calculated on the basis of their income from 3 years previously. For example, social security contributions payable in 2014 are based on earnings in 2011, indexed for inflation. However, as of 2015 all contributions will be calculated on the basis of the individual's taxable professional income of the same year.

The contribution of a self-employed person is a lower percentage (22%) than the joint contribution of employers and employees, but gives fewer rights. A self-employed person, for example, is not entitled to unemployment pay, as they make no contribution to this part of the social security system.

Pension

The Belgian pension planning relies on three pillars of pension arrangements that can be combined, as detailed below.

The Belgian legal pension or retirement pension

The legal pension age is 65 years, for both men and women; and the normal career length is 45 years. As of 1 January 2015, the pensionable salary will be based on the number of career days instead of career years (with a maximum of 14,040 career days).

There is a distinction regarding the legal pension for employees, for self-employed and for civil servants. The different legal pension systems can be combined.

Legal pension for employees

The pensionable salary is calculated based on the annual professional income of the employee, submitted to the social security contributions. The maximum gross professional salary submitted to social security contributions and basis for the legal pension calculations is €52,760.95. The maximum pension is therefore €2,178.70 gross per month (single person rate) and the minimum is €1,123.34 gross per month (single person rate).

Legal pension for the self-employed or the independent

Also for the self-employed, the pensionable salary is calculated based on the annual professional income of the self-employed. The maximum professional income basis for the calculation of the pension is €55,576.94. The percentage of social security contributions

attributed to the legal pension for the self-employed is lower than the percentage taken into account for the employees. Therefore the minimum pension for a self-employed person is €1,060.94 (single person rate) and the maximum pension for a self-employed is €1,560.62 (single person rate).

Retirement bonus

Both employees and self-employed are entitled to a retirement bonus, if they have worked after the age of 62.

Compulsory retirement

One is not obliged to stop working and may continue to work after retirement, either self-employed or as an employee.

Early retirement

Early retirement is possible, but if a person wants to retire earlier than age 65 or with <45 career years, this will have a negative impact on their legal pension.

The amount of legal pension deductions

Whether the pensioner receives 60% (single person rate) or 75% (household rate) of the calculated pension rate will depend on their status.

Social security contributions are due on the amount of the legal pension; these contributions range from 3.55% to 5.55%, and the pension is also submitted to wage withholding taxes.

The supplementary or extra-legal pension

In addition to the legal pension, the Belgian government allows for an 'extra-legal pension'.

Extra-legal pension for employees

Pension introduced within the Joint Committees

Some Joint Committees made it compulsory for employers to provide their employees with an extra-legal pension. The amount of the employer's contribution is also determined within the Joint Committees and is normally a small percentage of the gross salaries of the employees. The employer can choose to increase their contribution, but can never do less than established by the Joint Committees.

Pension introduced within the company

Individual pension promises are only allowed on condition that there is a collective pension scheme for all personnel.

Contributions

The employer must pay an annual 4.4% tax and 8.86% of social security contributions on premiums paid. A specific contribution of 1.5% applies if the employer's contribution exceeds €31,212 per person per year. The employer's contributions are tax-deductible. The personal contributions of the employee will result in tax relief for the employee.

Deductions

Social security contributions are due; these contributions range from 3.55% to 5.55%, and the pension is also submitted to wage withholding taxes in a tax-friendly manner.

Extra-legal pension for self-employed

Voluntary Supplementary Pension for the Self-employed (VSPS)

The VSPS is open to all self-employed. The contributions are fully tax-deductible. On an annual basis, the amount that must be 'saved' has to be at least €600, with a maximum of €3,027.09.

Pension plan through the company

This pension plan is open for all self-employed company directors who have a formal mandate within the company and a monthly remuneration. The pension plan can be a group insurance and/or an individual supplementary pension, established by the company. The company's contributions are tax-deductible. The company must pay an annual tax of 4.4% on contributions paid to the insurance company; if the company's contribution exceeds €31,212 per director per year, then a specific contribution of 1.5% is also due.

Deductions

Social security contributions are due and the pension is also submitted to wage withholding taxes in a tax-friendly manner.

80%-mark

The 80%-mark is a specific mark that needs to be respected, in order to apply the above-mentioned tax incentives. This means that the combined benefits from the legal pension and the supplementary pension cannot exceed 80% of the final gross annual salary of the employee or self-employed director.

The pension savings plan

The 'third pillar' is established by individual pension savings plans that each individual can establish, independently from their professional status.

Variations

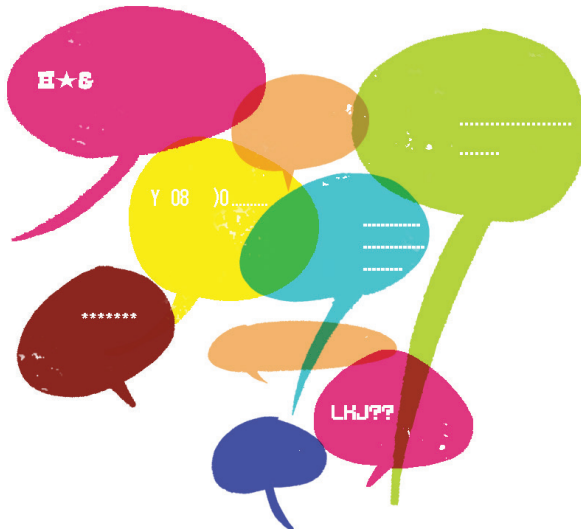
- a. Life insurance: this has a guaranteed return, with the maximum amount that can be 'saved' each year amounting to €2,280.
- b. Pension savings insurance: this also has a guaranteed return. The maximum amount that can be 'saved' each year is €950. It is not possible to deposit more than this amount into the insurance.
- c. Pension savings fund: this has no guaranteed return, but the return can be much higher than (for example) the return from pension savings insurance. The maximum amount that can be 'saved' each year amounts to €950. It is not possible to deposit more than this amount into the savings fund.

Tax relief

Tax relief is a deduction of the taxes due of 30% of the amount transferred in the savings plan. This tax deduction of 30% for a life insurance and another pension savings plan can in some cases be combined.

Deductions

There are no social security contributions due on the capital sum paid. The amount of tax deductions differs depending on the pay date of the capital sum, the start date of the contract, the chosen plan, if tax relief was enjoyed. etc.



Morison International in Belgium



The Next Step

Contact Van Havermaet Groenweghe to discuss your needs.

www.vhgconsultants.be

www.vhg.be

Hasselt (head office)

'Kasteel Ter Poorten'

Diepenbekerweg 65

T: +32 (0)11 30 13 50

E: hasselt@vhg.be

Herentals

Diamantstraat 10 bus 201

T: +32 (0)14 59 33 63

E: herentals@vhg.be

Geel

Pas 257

T: +32 (0)14 58 26 39

E: geel@vhg.be

Genk

Weg naar As 27

T: +32 (0)89 35 69 61

E: genk@vhg.be

Brussels

Lambroekstraat 5A (Diegem)

T: +32 (0)2 892 80 70

E: brussel@vhg.be

E: bruxelles@vhg.be

E: brussels@vhg.be

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