Key tax factors for efficient cross-border business and investment involving Belgium

EU Member State  | Yes
--- | ---

Double Tax Treaties  | With the following countries, territories and jurisdictions:
--- | ---
Albania | Malta | Singapore
Algeria | Mauritius | Slovenia
Argentina | Mexico | South Africa
Armenia | Moldova | Spain
Australia | Mongolia | Sri Lanka
Austria | Montenegro | Sweden
Azerbaijan | Morocco | Switzerland
Bahrain | Netherlands | Taiwan
Bangladesh | New Zealand | Tajikistan
Belarus | Nigeria | Thailand
Bosnia & Herzegovina | North Macedonia | Tunisia
Brazil | Norway | Turkey
Bulgaria | Oman | Turkmenistan
Canada | Pakistan | UAE
Chile | Philippines | Uganda
China | Poland | UK
Congo | Portugal | Ukraine
Croatia | Qatar | Uruguay
Cyprus | Romania | US
Czech Rep. | Russia | Uzbekistan
Denmark | Rwanda | Venezuela
Ecuador | Senegal | Vietnam
Egypt | San Marino | Serbia
Estonia | Senegal | Seychelles
French | Singapore | Slovenia
Germany | Switzerland | Taiwan
Ghana | Sweden | Turkey
Georgia | Thailan | Turkmenistan
Greece | Tunisia | UAE
Hungary | Turkey | Uganda
Iceland | USA | Ukraine
Indonesia | UK | Uruguay
Ireland | Vietnam | US
Isle of Man | Vietnam
Israel | Uzbekistan | Venezuela
Italy | USA | Vietnam
Japan | USA | Vietnam
Kazakhstan | USA | Vietnam
Korea | USA | Vietnam
Kuwait | USA | Vietnam
Kyrgyzstan | USA | Vietnam
Latvia | USA | Vietnam
Lithuania | USA | Vietnam
Luxembourg | USA | Vietnam
Macau SAR | USA | Vietnam
Malaysia | USA | Vietnam
Malta | USA | Vietnam
Mauritius | USA | Vietnam
Mexico | USA | Vietnam
Montenegro | USA | Vietnam
Morocco | USA | Vietnam
Netherlands | USA | Vietnam
New Zealand | USA | Vietnam
Nigeria | USA | Vietnam
North Macedonia | USA | Vietnam
Norway | USA | Vietnam
Oman | USA | Vietnam
Pakistan | USA | Vietnam
Philippines | USA | Vietnam
Poland | USA | Vietnam
Portugal | USA | Vietnam
Qatar | USA | Vietnam
Romania | USA | Vietnam
Russia | USA | Vietnam
San Marino | USA | Vietnam
Senegal | USA | Vietnam
Serbia | USA | Vietnam
Seychelles | USA | Vietnam
Singapore | USA | Vietnam
Slovakia | USA | Vietnam
Slovenia | USA | Vietnam
| **Most important forms of doing business** | Corporation (SA/NV) or limited liability company (SPRL/BVBA). |
| **Legal entity capital requirements** | Yes |
| - Corporation (SA/NV): EUR 61,500 (fully paid in capital). |
| - Limited liability company (SPRL/BVBA): EUR 18,550, of which at least EUR 6,200 must be paid in capital. |
| **Residence and tax system** | A company is resident if its registered office, main establishment, or place of management is located in Belgium. Resident companies are taxed on their worldwide income. |
| **Compliance requirements for CIT purposes** | Filing of annual corporate income tax return no later than 6 months after the closing date of the annual accounts (electronically). |
| **Corporate income tax rate** | The standard corporate income tax rate of 33.99 percent was lowered to 29.58 percent as from 2018. It will be further reduced to 25 percent as from 2020. |
| **Withholding tax rates** | On dividends paid to non-resident companies |
| Generally 30 percent (exemptions may apply). As of January 1, 2007, dividends paid to companies established in tax treaty countries are exempt from withholding tax, if: |
| - Conditions similar to the conditions of the EU Parent-Subsidiary Directive are met; and |
| - The relevant treaty includes an exchange of information clause. |
| Since January 1, 2018, no withholding tax applies to dividends paid to foreign companies (implementation of CJEU Tate & Lyle case): |
| - established in an EEA Member State or in a tax treaty country, |
| - having a participation of less than 10 percent but more than EUR 2,500,000, |
| - held in full ownership for at least one year, |
| - to the extent that the withholding tax cannot be credited or refunded in the hands of the receiving company. |
| On interest paid to non-resident companies |
| Generally 30 percent (exemptions may apply). Double tax treaties and EU Directives may reduce or exempt the withholding tax. |
| On patent royalties and certain copyright royalties paid to non-resident companies |
| Generally 30 percent (exemptions may apply). Double tax treaties and EU Directives may reduce or exempt the withholding tax. |
On fees for technical services

29 percent on 50 percent of gross amount if (1) Belgium has power to tax (according to tax treaty), or (2) fee is not taxed in country of residence (if there is no tax treaty)

On other payments

No

Branch withholding taxes

No

**Holding rules**

**Dividend received from resident/non-resident subsidiaries**

Exemption method (dividends received deduction (“DRD”) of 100 percent):

- Participation requirement: 10 percent of the share capital or EUR 2,500,000 of acquisition value;
- Minimum holding period: one year;
- Taxation requirement: (i) subject to tax and (ii) nominal and effective rate under domestic common law rules not less than 15 percent (does not apply to dividends from EU subsidiaries). Other specific exclusions apply;
- Excess carry-forward: As of January 1, 2010, excess DRDs – which could not previously be used – can be carried forward to the following assessment years (for an unlimited period). The new provision only applies to dividends from subsidiaries established in an EU Member State (as of January 1, 2010) and to dividends from subsidiaries established in an EEA Member State (as of January 1, 2011). Nevertheless, the Belgian tax administration accepts, in some cases, the carry-forward of excess DRDs for dividends from subsidiaries established in third countries.

**Capital gains obtained from resident/non-resident subsidiaries**

No taxation on the capital gains realized on shares of which the dividends fulfill the taxation conditions for the ‘dividends received deduction’ and that the company holds for an uninterrupted period of at least 1 year. If holding period condition is not fulfilled, capital gain is taxable at separate rate of 25.75 percent. A participation requirement (10% or EUR 2,500,000) applies as well.

**Tax losses**

Losses may be carried forward indefinitely. Carry-back is not permitted.

**Tax consolidation rules/Group relief rules**

Yes, as of the 2020 tax year, i.e. the FY commencing on January 1, 2019.

**Registration duties**

Belgium’s capital duty rate is 0 percent. Only a fixed registration duty of EUR 50 is due.
<table>
<thead>
<tr>
<th><strong>Transfer duties</strong></th>
<th><strong>On the transfer of shares</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
</tr>
<tr>
<td><strong>On the transfer of land and buildings</strong></td>
<td>In principle, 10 or 12.5 percent (depending on the region where the immovable property is located).</td>
</tr>
<tr>
<td><strong>Stamp duties</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Real estate taxes</strong></td>
<td>Annual tax on deemed rental income.</td>
</tr>
</tbody>
</table>

| **Controlled Foreign Company rules** | Yes, as of the 2020 tax year, i.e. the FY commencing on January 1, 2019. |

<table>
<thead>
<tr>
<th><strong>Transfer pricing rules</strong></th>
<th>General transfer pricing rules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Arm's length principle.</td>
</tr>
<tr>
<td><strong>Documentation requirement?</strong></td>
<td>Supporting documentation is required.</td>
</tr>
<tr>
<td></td>
<td>Formal TP documentation requirements (Master and Local file) and Country-by-Country Reporting have been introduced.</td>
</tr>
</tbody>
</table>

| **Thin capitalization rules** | Yes (5:1 debt-to-equity ratio for interest paid to tax-privileged recipients or to group companies (applicable as from July 1, 2012) and 1:1 ratio for interest paid to directors (individuals) or to shareholders (individuals). Belgium introduced a new limitation on deductible interest at the highest of EUR 3 million or 30% of EBITDA. The rules will enter into force from assessment year 2020, covering a taxable period commencing on January 1, 2019 at the earliest. The new limitation only applies to interest on loans concluded as of June 17, 2016. The existing thin capitalization rule (5:1) remains applicable for interest on “old” intra-group loans and for interest paid to tax havens. Interest and EBITDA will be calculated on an ad hoc consolidated basis. Non-deductible interest can be carried forward to the following years without limit. It can also be transferred to other group companies. The rule is not applicable to stand-alone entities and financial undertakings. |

© 2019 KPMG International Cooperative (“KPMG International”). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.
General Anti-Avoidance rules (GAAR)

General anti-abuse rule: If the tax authorities have a presumption or any other evidence that there is fiscal abuse in a transaction, the transaction is re-qualified/denied. It is up to the taxpayer to prove that the legal qualification chosen is justified by reasons other than tax avoidance. If the taxpayer is unsuccessful in proving its case, the tax authorities will be allowed to determine the taxable base and tax computation as if no fiscal abuse had taken place.

Specific Anti-Avoidance rules/Anti-Treaty Shopping Provisions/Anti-Hybrid rules

Interest, royalties, and service fees paid to tax havens are not deductible except if the taxpayer proves that the expenses are connected to transactions actually carried out and do not exceed normal limits.

As of January 1, 2010, payments to tax havens (nominal tax rate less than 10 percent/ no corporate tax on domestic or foreign income / effective corporate tax rate on foreign income less than 15% – or OECD standard for exchange of information is not effectively and substantially applied) must be reported in a special tax form.

Anti-hybrid and anti-abuse rules in EU Parent-Subsidiary Directive have been transposed into Belgian legislation.

Adoption of anti-hybrid mismatches rules as of the 2020 tax year, i.e. the FY commencing on January 1, 2019 (implementation of ATAD).

Advance Ruling system

Yes, binding ruling generally issued for a period of 5 years.

IP / R&D incentives

Patent income deduction (80% of gross patent income) was cancelled as of July 1, 2016 (with 5 years grandfathering period - June 30, 2021) as it was not in line with OECD modified nexus approach.

New Innovation income deduction available as of July 1, 2016. The net income from qualifying intellectual property can be deducted at 85%. This deduction applies to income from patents or supplementary protection certificates, breeders’ rights, orphan drugs, data and market exclusivity and copyrighted software. Capital gains on such IP also qualify if reinvested.

The net income is determined based on the ‘modified nexus approach’, according to which there should be sufficient substance and an essential link between the expenses, the IP and the related IP income. This is expressed in the following formula:

\[
\text{[qualifying R&D costs/total R&D costs]} \times \text{total income from intellectual property} \quad = \quad \text{qualifying income from intellectual property}
\]

Qualifying expenditure includes the cost of outsourcing to unrelated parties, whereas the cost of outsourcing to related parties is excluded. An up-lift of 30% of qualifying costs is provided.

The unused deduction can be carried forward.

Other incentives

Notional interest deduction: both resident companies and Belgian branches of non-resident companies can deduct a notional (or deemed) interest but only on their
adjusted incremental equity (capital increase and retained earnings) and to be spread over 5 years.

**VAT**

The standard rate is 21 percent; reduced rates are 0, 6 and 12 percent.

**Other relevant points of attention**

No

Source: Belgian tax law and local tax administration guidelines, updated 2019
Contact us

Nikolaas Lenaerts  
KPMG in Belgium  
T +32 (0)3 8211869  
E nlenaerts@kpmg.com

Kris Lievens  
KPMG in Belgium  
T +32 (0)2 7084761  
E klievens@kpmg.com

Jos Goubert  
KPMG in Belgium  
T +32 (0)2 7084680  
E jgoubert@kpmg.com

kpmg.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG International Cooperative (“KPMG International”), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved. The KPMG name and logo are registered trademarks or trademarks of KPMG International.