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Belgium

TAX

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This country-specific Q&A provides an overview of tax laws and regulations applicable in Belgium.

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BELGIUM TAX



1. How often is tax law amended and what are the processes for such amendments?

Notwithstanding Belgian tax law can be amended at any time throughout the year, most amendments to tax law are grouped in so-called program laws and are voted at the end of the year. Due to the fact that the present Belgian coalition government only acts as a minority government following a caretaker government, Belgian tax law has not been amended for almost two years. It was just in the context of the Covid-19 pandemic that some (temporary) amendments have been made.

Both the Federal State and Regions have, within their specific competences, legal power to draft and adopt legislative measures, as well as the provinces and municipalities. However, the competence of the provinces and municipalities is limited to certain tax regulations.

The legislative process is public in parliament and usually allows institutions, interest groups and academics to comment on draft bills.

2. What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?

Belgian corporate entities are due to file their annual corporate income tax return electronically. These filings are subject to strict deadlines.

Upon request, every taxpayer has the obligation to provide the tax authorities with all relevant documents necessary for establishing the amount of taxable income. These documents have to be conserved for a period of 7 years from January 1 of the year following the audited financial year.

3. Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?

The Federal Ministry of Finance, the key regulatory tax authority, is hierarchically structured and has authority over the central and local tax administrations. Each of the three Regions has its own tax administration, its structure may vary depending on the Region.

The local tax administrations are in general quite available for dealing with standard issues. More complex issues (such as transfer pricing, complex structure or tax fraud) can be dealt with by the central tax administration. The central ruling commission can, under the authority of the Federal Ministry of Finance, deliver by means of a ruling certainty over the interpretation of tax laws. Obtaining such ruling usually takes up to two to three months. Tax disputes can be submitted to the tax mediation service, which guarantees to mediate independently.

The time needed for solving standard issues can vary strongly depending on the competent service and the complexity of the issue. Practice shows that the central tax administration needs more resources in order to handle issues more swiftly.

4. Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?

Every income tax assessment can be disputed before the tax administration by submitting a written tax complaint within a period of six months. Subsequently, a petition before the competent Tribunal of First Instance can be filed within three months after a dissatisfying ruling or, when the administration fails to handle the complaint within six months, after six months following the submission of the complaint. The administrative phase is a mandatory prerequisite before an adjudication

by a court can be delivered.

The judgement of the Tribunal of First Instance can be appealed within a month by either the taxpayer or the tax authority. In some cases, a judgement of the Court of Appeal can be filed by the Belgian Supreme Court, which regulates the application of the law.

A procedure before the Tribunal of First Instance takes usually between one and three years. Another procedure before the Court of Appeal or Supreme Court can add another few years, depending on the workload of the specific court.

5. Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?

Corporate tax must be prepaid on a quarterly basis, correspondent to the estimated current year's income. When a company fails to pay sufficient prepayments, non-deductible surcharges are imposed.

A late payment triggers the late payment interest ("LPI") at an annual rate of 4% on taxes that are paid belatedly. Conversely, when the taxpayer chooses to pay a disputed tax, he will avoid the LPI and generate a LPI in his favor when he wins the tax dispute.

6. Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?

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Taxpayer data is recognized highly confidential in Belgium. Civil servants within the tax authorities (Federal, Regional and local) are bound to professional secrecy and may not disclose, outside of their profession, any information regarding a taxpayer's file. Violation of that obligation is punishable under criminal law. Within the administration, civil servants of the tax authorities may disclose information to other

administrative authorities (e.g. social security service).

All EU Member States are required by EU Directive 2015/849 to implement a register of beneficial ownership. Belgium transposed this EU directive by virtue of the law of December 16, 2015. As from September 30, 2019, every Belgian corporate entity is held to file a public register of beneficial ownership, the UBO-register (Ultimate Beneficial Ownership).

7. What are the tests for residence of the main business structures (including transparent entities)?

A corporation is, according to Belgian tax law, a Belgian resident when its legal seat, main establishment or place of effective management is located in Belgium. A corporation with its legal seat in Belgium is supposed to be a Belgian resident, however, this can be refuted.

Transparent entities do not qualify as a corporation to Belgian tax law and are therefore not subject to Belgian corporation tax.

8. Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?

Belgium has implemented BEPS Action 13 regarding transfer pricing into national law. Since this implementation, the number of tax inspectors specialized in transfer pricing has increased substantially, resulting in an increase of transfer pricing audits. By publishing a new circular letter regarding transfer pricing in June 2020, the federal tax authority emphasizes the importance attached to this issue. Since the creation of a federal Transfer Pricing Unit, tax audits on transfer pricing issues have increased significantly.

9. Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?

CFC

Although Belgium has a worldwide tax system rather than a territorial one, it introduced comprehensive CFC rules at the end of 2017, which are mostly in line with the EU's ATAD.

Under the Belgian CFC rules, non-distributed profits of a

foreign company or establishment are added to the taxable income of a Belgian company/head office if and to the extent that such profits arise from artificial constructions that have been put in place for the essential purpose of obtaining a tax advantage. In line with ATAD, a foreign company qualifies as a CFC when it's directly or indirectly controlled by a Belgian corporation (at least 50% of the votes, the capital or the entitlement to its profit are localized by the Belgian corporation) and when the foreign company is subject to a strongly favorable taxing regime compared to the Belgian one.

Thin Cap regime

Belgium has two thin capitalization rules.

A 1:1 debt/equity ratio applies to interest payments made on loans granted by individual directors, shareholders, and non-resident corporate directors. Interest payments will be requalified as non-deductible dividends to the extent that the total debt exceeds the said ratio.

There is a 5:1 thin-capitalization rule, whereby interest paid or owed, directly or indirectly, to related parties and/or lenders based in tax havens is deductible only to the extent that the tainted loans do not exceed five times the taxpayer's equity. Loans granted by Belgian or EEA financial institutions are not considered as debt for thin cap purposes. Equity is defined as the sum of (i) the taxed reserves at the beginning of the taxable period and (ii) the fiscal paid-up capital at the end of the taxable period.

Finally, the ATAD-compliant interest limitation rule has been implemented into Belgian national law, limiting the deduction of the "exceeding borrowing cost" (which is the positive difference between, on the one hand, all interest and other costs being economically equivalent to interest that are considered as a business expense, and, on the other hand, any interest and other financial income being economically equivalent to interest, that is included in the profits of the tax year and not exempt from tax in Belgium by virtue of a tax treaty) to either 30% of the taxpayer's Belgian EBITDA or EUR 3 million, whichever is higher.

Transfer pricing

The Belgian transfer pricing is an implementation of EU ATAD and follows the OECD transfer pricing guidelines. Based on the arm's length principle as the basis of transfer pricing, a recent circular letter sets the outlines of transfer pricing out. Advance pricing agreements may be obtained.

10. Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?

Belgium tax legislation provides since 2012 a rather wide general anti-avoidance rule in line with the jurisprudence of the European Court of Justice.

Transactions that are set up with the sole or predominant aim of benefiting from an advantageous tax rule (e.g. a deduction, exemption, deferral, or other) or avoiding the application of a disadvantageous tax rule can be re-characterised by the tax authorities so that the advantageous rule is denied or the disadvantageous rule takes effect. If the tax authorities make such assertion, the taxpayer has the right to demonstrate that he or she had substantial non-tax motives for entering into the transaction the way it was set up.

Recently, more and more tribunals and courts are called to apply the GAAR to specific cases. The 2012-GAAR turns out to have become a favorite means of taxation which turns out to be effective in some cases where tax abuse is proven to be committed.

11. Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?

The following BEPS recommended changes have already been implemented into Belgian tax law:

- Action 2 (anti-hybrid rule and anti-abuse rules);
- Action 3 (CFC-regulation);
- Action 4 (exceeding borrowing cost);
- Action 5 (innovation income deduction + common reporting standard);
- Action 6 (MLI);
- Actions 8-10 (transfer pricing);
- Action 12 (mandatory disclosure of aggressive tax planning schemes);
- Action 13 (master file and local file reporting);
- Action 14 (participation in the mutual agreement procedure); and
- Action 15 (MLI).

Currently, there are no plans to implement any more BEPS recommendations in Belgium.

12. In your view, how has BEPS impacted on the government's tax policies?

The former Belgian coalition government has been generally in favour of BEPS – and the EU version of BEPS, ATAD I and ATAD II – with the result that it has been transposed without much “gold plating”. Belgium wants to keep its competitiveness for attracting inward investments from the most significant trading partners, such as Germany, France, USA, Japan, Canada, etc.

13. Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?

Yes, the Belgian tax system broadly follows the recognized OECD model.

a) taxation of business profits

Business profits realized by corporate entities are taxed at a rate of 25%. PME's can profit from a tax rate of 20% for their first EUR 100 000 of income.

Business profits and proceeds derived from a liberal profession gained by individuals are taxed at progressive rates, with a top rate of 50% applicable as from EUR 40 480 (assessment year 2020).

b) taxation of employment income and pensions

Income derived from employment and pensions is taxed at progressive rates (between 25% and 50%). This category of income encompasses the entire consideration that an employee receives by way of his/her employment, including non-pecuniary benefits (e.g. the free use of a company car). Taxation of employment is generally levied through employer wage tax withholding.

c) VAT

VAT is applicable on the supply of goods and service. A standard VAT rate of 21% applies, whereas certain supplies may be taxed at a reduced rate of 12% or 6%.

d) taxation of savings income and royalties

Movable income, i.e. interest income and royalties from

assets that are not used for a professional activity gained by individuals, is in principle subject to a 30% withholding tax. This withholding tax may be final for individuals. In the absence of a withholding tax, the 30% will be due by means of an assessment.

The 30% withholding tax also applies to interest income and royalties gathered by corporations. However, a credit or reimbursement can be obtained in specific cases upon assessment.

e) taxation of income from land

Individuals

The tax regime of income derived by an individual from immovable property that is not used for professional purposes, will depend on the use that is made from the property.

Income of property that is not leased or leased to a private individual who does not use it professionally is taxed based upon a fictional market lease value, usually lower than the real market value. Individuals who lease property to a company or an individual who uses the property professionally are taxed on the actual rental income (at progressive income tax rates).

Corporations

Corporate entities gaining income from land is subject to corporate tax at the normal rate. Corporations are however also subject to a separate tax on the deemed annual rental income. The said tax is deductible for corporate income tax purposes.

f) taxation of capital gains

Individuals

Capital gains realized by individuals on assets that are not held for professional purposes are taxed at a rate of 33%. Such gains are however exempt if they result from the normal management of one's private estate. Capital gains on real estate assets may however still be taxed at a rate of 16,5% or 33% depending on the time span between the acquisition and sale of the asset.

Corporations

Capital gains realized by corporations are in principle taxed at the normal corporate income tax rate, but exceptions are possible.

A first exception consists of capital gains on qualifying shareholdings (as part of the participation exemption regime). If the shareholding represents at least 10% of the share capital of the underlying company or has an

(historic) acquisition value of at least EUR 2 500 000, and has been maintained for an uninterrupted period of at least one year immediately preceding the disposal, the capital gains, realized on qualifying shares, are fully exempt from taxation.

A second exception is a rollover regime for capital gains realized on fixed assets. If the entire proceeds of the disposal of (partly) depreciated tangible fixed assets is invested into qualifying depreciable assets within three (or five) years following the realization, the capital gain is on a yearly basis deducted from the tax base of the assets in which the proceeds of the disposal are re-invested. Depreciations will only be allowed on this reduced tax base, resulting in the taxation of the temporarily exempt capital gain over time, as the newly invested assets are depreciated

g) stamp and/or capital duties

No capital or stamp duties are due upon the formation or the increase of capital of a company or on the transfer of shares.

14. Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?

Belgian corporations are taxable on their worldwide income, less allowable deductions. The taxable income is based on the approved Belgian GAAP annual accounts. The accounting profit can be adjusted where tax provisions deviate from accounting standards.

15. Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?

Belgian resident bodies carrying out profit-making entities and having a separate legal entity are subject to Belgian corporate income tax.

The main determining nexus to classify an entity as a taxable entity, is the concept of legal personality. Entities without legal personality are treated as transparent for income tax purposes. Only some corporate entities are attributed legal personality.

16. Is liability to business taxation based

upon a concepts of fiscal residence or registration? Is so what are the tests?

All Belgian resident corporations having legal entity are subject to corporate income tax, regardless of registration by the tax authorities.

A corporation is, according to Belgian tax, a Belgian resident when its legal seat, main establishment or place of effective management is located in Belgium. A corporation with its legal seat in Belgium is supposed to be a Belgian resident, however, this can be refuted.

17. Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?

Only some minor special taxation regimes (ports, diamond sector) exist in Belgian corporate tax.

However, SME's can profit from a wide variety of favorable tax measures and incentives.

Due to the worldwide COVID-19 outbreak, losses realized in 2020 can be carried back and offset to the profits made in 2019. This carry-back is only applicable for one year.

18. Are there any particular tax regimes applicable to intellectual property, such as patent box?

In terms of Corporate Income Tax, two beneficial regimes exist in parallel: the old Patent Income Deduction, which allows a deduction of 80% of gross income from the exploitation of patents developed or improved in Belgium, and the new Innovation Income Deduction, which allows a deduction of 85% of qualifying innovation income determined in accordance with the OECD's nexus rules.

On wages for qualifying scientific workers, 80% of the statutory amount of Wage Withholding Tax does not need to be transferred to the tax collector, substantially reducing the "cost to company" for employing such workers.

19. Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group

for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?

Fiscal consolidation as such doesn't exist in Belgian income tax.

From 2019 onwards, however, a so-called group contribution regime is introduced in Belgium, inspired by the Swedish regime. Corporate taxpayers that are 90% or more directly related (parent and subsidiary; sisters of the same common parent company) will be allowed to form a group, where a profitable member of the group is allowed to transfer a portion of its profits to a loss-making member of the group. Due to compensation, both corporations can remain generally untaxed. The profitable member is held to pay a contribution to the loss-making member of the group. This contribution equals the amount of saved taxes and is not tax-deductible for the payer.

20. Are there any withholding taxes?

Yes. Wages and pensions paid to both resident and non-resident employees and directors are subject to a withholding payroll tax. This payroll tax is deductible in the hands of the employer.

Income from movable property (dividends, interests...) is, in general, subject to a 30% withholding tax. Such withholding tax may be offset or exempt by the recipient of the income against its corporate income tax, provided that certain conditions are met.

21. Are there any recognised environmental taxes payable by businesses?

Both at federal and regional level, environmental taxes are levied. Federal environmental taxes include amongst others excise duties levied on certain energy products (petrol, gas, etc) and electricity. At a regional level,

environmental taxes are mostly levied on different kinds of waste.

22. Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?

Dividend income received by a Belgian company is in principle subject to a corporate tax at a normal rate. A 100% tax-exemption of this dividend income is applicable when the receiving company holds at least 10% of the share capital of the underlying company or has an (historic) acquisition value of at least EUR 2 500 000, the shareholding has been maintained for an uninterrupted period of at least one (or the shareholder commits to hold), and the distributing company must be subject to Belgian or a similar corporate tax regime.

Dividends that are paid by a Belgian company or through a Belgian intermediary are in principle subject to a 30% withholding tax. Belgian domestic law provides for reduced rates under certain conditions. Provided that certain conditions are met, a company may credit the withholding tax against the corporate income tax that is due.

23. If you were advising an international group seeking to re-locate activities from the UK in anticipation of Brexit, what are the advantages and disadvantages offered by your jurisdiction?

Belgium's key advantage is, besides its central location in Europe, its highly-skilled and multilingual workforce and its comparatively cheap office and housing market. Many relevant political and international institutions have their headquarters in Belgium, such as the European Union, NATO, the World Customs Organization and Eurocontrol.

Disadvantages can be found in the rather complex political structure and the rather high employment taxation and expensive social security system.

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