BELGIUM

Law and Practice

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De Langhe Attorneys acts for a tremendous range of Belgium's most successful privately owned businesses, as well as international companies setting up shop in Belgium. The team of specialised tax attorneys handles Belgian corporate tax matters and tax litigation matters before Belgian courts and European courts. The firm is also dedicated to international tax matters, ranging from handling Belgian corporate tax work for inbound investors and assisting with non-Belgian tax work for outbound corporate clients to handling EU and tax treaty work for all types of corporate clients (mostly advisory, but with some litigious work). The tax team also advises (and litigates) in matters that are directly linked to corporate tax work, such as transfer pricing, employee incentive plans and tax planning for company executives.

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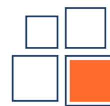

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1. Types of Business Entities, Their Residence and Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Most businesses in Belgium adopt a corporate form, not only for tax reasons but also, and often primarily, for the benefit of limited liability. The most commonly used Belgian corporations offering limited liability are the closely held company (bv in Dutch; sp in French) and the limited liability company on shares (nv in Dutch; sa in French). Businesses not incorporated in the form of a limited liability company are either sole proprietorships or contractual arrangements offering no separate legal personality and no limited liability. These are all tax transparent, whereas corporations – even those that do not have limited liability – are taxed as such under the Corporate Income Tax (CIT) rules, which are part of the Income Tax Code of 1992 (ITC92).

1.2 Transparent Entities

Civil partnerships are often utilised to structure family assets (such as shareholdings, art collections and real estate), with a view to parents keeping control while all or part of the value is transferred to the next generation(s), and also in the construction industry to form a consortium to execute a large construction project.

European Economic Interest Groupings (EEIGs) are utilised to structure the supporting and/or ancillary activities (for the benefit) of two or more taxpayers of several EU member states. If an EEIG is established in Belgium, it should not create a permanent establishment in Belgium for the non-Belgian participants.

1.3 Determining Residence of Incorporated Businesses

Corporations are tax resident in Belgium if either or both of the following is located in Belgium:

- the place of effective management; or
- the principal place of business of the corporation.

Transparent entities are not subject to corporation tax, so the determination of their tax residence is not relevant. For civil law purposes, Belgian law will apply if the entity is governed by the relevant Belgian laws, provided the Belgian conflict-of-law rules do not make any other jurisdiction competent in terms of governing law.

1.4 Tax Rates

Corporate taxpayers are taxed at the rate of 25%. Small and medium-sized enterprises (SMEs) are taxed at a rate of 20% on the first EUR100,000 of net taxable income (subject to certain conditions). Individuals are subject to a progressive scale of Personal Income Tax on the net income of their business: a first tranche of progressively taxable income is taxed at 0%, the next tranche at 25%, and so on. As soon as the total income that is taxable at the progressive rates exceeds approximately EUR48,320 (per annum), the top rate of 50% kicks in. Personal income tax rates are subject to a municipal surcharge of, typically, 5–10%, increasing the aggregate top rates to approximately 52.5–55%.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

The accounting profits are the basis for determining the taxable income of a corporation.

On the one hand, there is an exhaustive list of non-deductible items, which are added back to the accounting profits (most fines, most local taxes, the CIT itself, the non-deductible part of automobile costs, etc). A number of tax-exempt items are added to the retained earnings measured on the first day of the taxable year, so that the increase of retained earnings diminishes (or the decrease grows) (eg, tax-exempt capital gains on shares that qualify for the participation exemption).

Finally, a number of specific tax attributes and tax incentives are deducted, such as dividends that are deductible by virtue of the participation exemption, net profits of permanent establishments that are exempt in Belgium by virtue of bilateral tax treaties, etc. Corporate taxpayers are taxed on an accruals basis.

2.2 Special Incentives for Technology Investments

The Innovation Income Deduction is a beneficial regime to encourage investment in technology, 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.

2.3 Other Special Incentives

Belgium has an attractive tax regime for the financing of audiovisual and certain other creative works, allowing corporate investors in such projects to deduct their investments from their taxable income, up to certain thresholds. Belgium also has an EU-proof tonnage tax regime in place for the shipping industry. For the diamond industry, Belgium applies a so-called carat tax that offers a relatively low – to some extent notional – tax base for diamond traders. Group finance (or treasury) centres enjoy a beneficial regime for computing the 5:1 thin capitalisation interest limitation (by netting interest owed or paid against interest earned or received).

2.4 Basic Rules on Loss Relief

Belgium allows Net Operating Losses (NOLs) to be carried forward with no time limits (no carry back). However, certain tax deductions go into a basket, including NOLs carried forward from previous tax years, and current-year profits over EUR1 million can be reduced by no more than 70% (limited to the amount of the basket), leading to a minimum taxable income of 30% on income over EUR1 million. With the exception of capital losses on shares, capital losses are deductible from current income, as capital gains are taxable as ordinary income (again, with the exception of capital gains on qualifying shares), although the taxation of capital gains on fixed assets can be deferred, under strict conditions.

2.5 Imposed Limits on Deduction of Interest

Interest on non-mortgage loans with no fixed term – other than those paid to affiliated companies under a framework agreement for centralised treasury management within a group – is limited to the monetary financial institution interest rate published by the National Bank of Belgium (for loans up to EUR1 million with a variable rate and an initial interest rate up to one year provided to non-financial corporations), raised by 2.5%. All other kinds of interest must meet the arm's length standard in order to be fully deductible. Any excessively high interest is not tax-deductible.

Then there is a 5:1 thin capitalisation 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.

Finally, an interest limitation rule that is compliant with the Anti-Tax Avoidance Directive (ATAD) has been transposed into Belgian national law, limiting the deduction of the *"exceeding borrowing cost"* (which is the positive difference between (i) all interest and other costs being economically equivalent to interest that are considered as a business expense, and (ii) 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 EUR3 million or 30% of the taxpayer's Belgian earnings before interest, taxes, depreciation and amortisation (EBITDA), whichever is higher.

2.6 Basic Rules on Consolidated Tax Grouping

Under the so-called group contribution 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, and a profitable member of the group will be allowed to transfer a portion of its profits to a loss-making member of the group, which will then remain effectively untaxed due to compensation with losses by the recipient entity. The entity transferring such profits will be required to pay the recipient company an amount in lieu of the CIT that it would have paid in the absence of the group contribution; this payment is not tax-deductible for the payer and not taxable for the recipient. This compensation has to be actually paid and cannot be booked as a debt. More specific details are explained in a circular letter, providing more certainty on matters such as the treatment of the compensation with foreign losses.

2.7 Capital Gains Taxation

In principle, capital gains are taxed as ordinary profits, with certain exceptions.

The first exception is capital gains on qualifying shareholdings (as part of the participation exemption regime), which are 100% tax-exempt if the shareholding represents at least 10% of the share capital of the underlying company or has an (historic) acquisition value of at least EUR2.5 million, and has been maintained for an uninterrupted period of at least one year immediately preceding the disposal.

The second exception is that capital gains on tangible fixed assets can be deferred, provided that the assets were on the taxpayer's balance sheet and have been depreciated for at least five consecutive taxable periods, and that the entire proceeds of the disposal – not only the capital gain – are invested into qualifying depreciable assets in Belgium or an EEA member state within three (or five) years following the realisation of the gain. The qualifying capital gain is not (immediately) taxed but is deducted from the tax base of the assets in which the proceeds of the disposal are reinvested. Depreciations will then 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. This temporary exemption regime is usually referred to as *"rollover"*.

2.8 Other Taxes Payable by an Incorporated Business

Belgium applies the EU VAT system. A peculiarity is that, at the option of the lessor and the lessee, new buildings can be leased by VAT tax-

payers to VAT taxpayers under the VAT regime, which was previously not possible. As a result, the lessor can deduct the input VAT paid on the development and construction of the building. This option can be of interest whenever the lessee or tenant is a VAT taxpayer with a full or substantial right to deduct input VAT – ie, most regular commercial and industrial businesses other than financial institutions, insurance companies and investment funds.

Other transactional taxes are mostly *"regionalised"* and may differ depending on the region where the transaction is situated (Flanders, Brussels Capital Region or Wallonia). For example, the sale of real estate triggers a real estate transfer tax of 12% in Flanders and 12.5% in Brussels and Wallonia.

The trading (but not the issuance) of shares and bonds and the like is subject to stamp taxes (with a relatively moderate cap per transaction).

Finally, regional and local taxes are due on a variety of business activities, and are sometimes burdensome. For example, many cities and municipalities impose a local tax on hotel rooms, engines, equipment and machinery, etc.

2.9 Incorporated Businesses and Notable Taxes

There are several other taxes that may be due, depending on the business operated by corporations (or unincorporated businesses) and the region where they are operating. For example, businesses selling certain goods packed in plastic or other packaging material (aluminium cans, etc) must pay *"recycling tax"*. Logistical operators may be subject to a special tax on trucks driving through one of the Belgian regions. In the wake of the financial crisis of 2008, banks are subject to a so-called bank tax. The operation of an *"old"* nuclear power plant is also subject to *"nuclear tax"*.

3. Division of Tax Base Between Corporations and Non-Corporate Businesses

3.1 Closely Held Local Businesses

Because of the high marginal tax rates in the personal income tax system (over 50% on any aggregated income in excess of approximately EUR48,320 per year), inter alia, most businesses opt for incorporation, taking advantage of the lower CIT rates of 25% and 20% for the first tranche of EUR100,000 of taxable profits for SMEs.

3.2 Individual Rates and Corporate Rates

The distribution of profits in the form of dividends triggers a dividend withholding tax of 30% (a lower rate may be available under certain conditions), which is the final tax for a Belgian resident individual shareholder.

3.3 Accumulating Earnings for Investment Purposes

In essence, the most significant rule that would discourage the accumulation of earnings in a corporation (instead of distributing earnings in the form of wages/salaries or dividends) is the fact that capital gains on investment assets are taxable in the hands of corporate taxpayers, whereas capital gains on privately held investment assets (shares and other securities, real estate, etc) are normally tax-exempt in the hands of private individual taxpayers.

3.4 Sales of Shares by Individuals in Closely Held Corporations

Dividends, including liquidation gains, are taxed at 30%. If the distributing company is estab-

lished in Belgium, this 30% will be levied in the form of a dividend withholding tax, which is the final tax for the individual shareholder. For dividends stemming from non-Belgian shares, either the Belgian financial intermediary will levy the 30% withholding tax, or the taxpayer will be required to declare the dividend income in their personal income tax return and pay a flat rate of 30% on this income.

Under certain conditions, a reduced rate of withholding or personal income tax may be available.

Capital gains on shares are normally tax-exempt in the hands of private individuals. Exceptions may apply – for example, if the taxpayer, together with their close family, owned more than 25% of the share capital in a Belgian company at any time during the five-year period immediately preceding the sale, and the shares are sold to a corporate buyer outside the EEA, the capital gains tax rate would be 16.5%. Also, so-called speculative gains are taxable (at a flat 33% rate) if the individual shareholder has bought and sold the shares in a speculative way (short holding period, borrowed funds to buy the shares, etc).

In 2019, the Belgian Constitutional Court quashed the so-called securities account tax, and a new securities account tax of 0.15% on securities accounts held by individual taxpayers was introduced in early 2021. The tax is due on securities accounts with an average value in excess of EUR1 million.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

Please see **3.4 Sales of Shares by Individuals in Closely Held Corporations**.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

The general withholding tax rate is 30%. Lower rates and even exemptions are available – for example, for dividends paid to qualifying parent companies established in countries with which Belgium has a bilateral tax treaty in force or for interest paid to so-called financial holding companies. Subject to certain conditions, a 15% or 20% rate applies to dividends paid by SMEs and related to shares issued in remuneration for a contribution in cash that took place after 1 July 2013.

SMEs can also opt to create a so-called liquidation reserve that gives rise to an extra 10% corporate income tax due from the company, with no additional withholding tax due from the shareholder upon the liquidation of the company. Dividends paid out of this liquidation reserve prior to the liquidation of the company give rise to a 20% withholding tax if the distribution occurs within the five years following the creation of the liquidation reserve, and 5% if the distribution occurs after five years. A 15% rate applies to dividends paid by certain real estate investment companies.

Belgian federal tax authorities draw attention to corporate groups, where the top holding company serves as a cash-pooling company – ie, the lender vis-à-vis the entire group. This is a common practice for construction/promotion companies, for example.

4.2 Primary Tax Treaty Countries

Foreign investors in Belgian stock sometimes make use of (interposed) holding companies in Luxembourg or Hong Kong, among other locations, because a zero rate of Belgian with-

holding tax is available, and dividends leaving Luxembourg and Hong Kong are exempt from withholding tax, either by default or subject to further planning. The Belgian tax authorities will scrutinise these structures and refuse the zero rate in any case of clear treaty shopping.

For interest-bearing instruments, the Netherlands and Luxembourg are sometimes used for the same reasons, but also with the same caveat for treaty shopping.

4.3 Use of Treaty Country Entities by Non-Treaty Country Residents

The Belgian tax authorities will scrutinise these structures and refuse the zero rate in any case of clear treaty shopping. In several advance tax rulings, the Ruling Commission has listed a number of criteria to test the reality and substance of interposed companies in jurisdictions such as Luxembourg.

4.4 Transfer Pricing Issues

Belgium will pay special attention to all significant internal dealings, such as the purchase and sale of raw materials and semi-finished or finished goods by related parties, but also to interest rates on intercompany loans and other financial arrangements and services provided by or to Belgian corporate taxpayers to or by non-Belgian related parties or parties (even unrelated) that are subject to no or low effective taxation.

4.5 Related-Party Limited Risk Distribution Arrangements

In the past, limited risk distribution arrangements (eg, commissionaire structures) were commonly used and not aggressively scrutinised by the Belgian tax authorities, but this is rapidly changing, especially since Belgium decided in 2017 to opt in to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) provision on commissionaire structures (Article 12). Practitioners generally advise taxpayers to apply for an advance tax ruling from the Ruling Commission in order to prevent any dispute with the tax auditors afterwards.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

Belgium has adopted a somewhat far-reaching version of the country-by-country reporting standard (BEPS Action 13), inter alia, by imposing CbC reporting for financial years starting on or after 1 January 2016. Other than this, the OECD standards are by and large adopted. Country-by-country reporting will also be important in rolling out the measures under Pillar Two. For more information, please see **9.2 Government Attitudes**.

4.7 International Transfer Pricing Disputes

Compared to previous years, the Belgian federal tax authorities seem to have adopted a different approach of late. For example, more importance is placed on personalised questionnaires rather than standardised questionnaires. Whereas audits previously usually focused on a single entity, today's audits more often focus on several (or even all) Belgian group entities.

Statistics on this are regularly published by the OECD. The latest data pertains to 2023 and reveals that 59 mutual agreement procedures (MAPs) on transfer pricing out of a total of 78 (equal to 76%) were closed in 2023 with an agreement that fully eliminates double taxation or fully resolves taxation that is not in accordance with a tax treaty.

These instruments were promoted by the Belgian federal tax authority as key elements in dispute resolution. Therefore, the Belgian federal tax authority is continuously increasing the capacity of its staff specialising in this matter. MAPs are becoming more and more common but meet the following two major obstacles:

- the initiative lies with the taxpayer; and
- they involve a procedure that takes time, energy and money.

5. Key Features of Taxation of Non-Local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

There is currently little or no experience in Belgium of compensating adjustments in connection with transfer pricing claims; how this will work out in practice remains to be seen.

5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-Local Corporations

By and large, local Belgian branches are taxed on an equal footing with Belgian subsidiaries, with the only major exception being that Belgium does not levy any *"branch profits tax"* in lieu of the dividend withholding tax to which Belgian subsidiaries are subject when distributing dividends to their parent companies or non-resident (corporate) shareholders.

5.3 Capital Gains of Non-Residents

Belgium does not impose (capital gains or other) tax on the sale of stock in a Belgian company by non-resident corporate shareholders. In exceptional circumstances, non-resident individual shareholders may be subject to Belgian capital gains tax on the sale of stock in Belgian companies, but not as a general rule.

5.4 Change of Control Provisions

Belgium does not have any change of control provisions that would apply to the disposal of an indirect holding in a Belgian corporation higher up the non-resident group or parent company. However, Belgium does have change of control provisions limiting the use of certain tax attributes – especially NOLs – by the Belgian corporation itself upon the occurrence of a change of control, unless such change of control is motivated by bona fide financial or economic reasons.

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

Minimum taxable profit formulas are used for non-resident taxpayers operating in Belgium through a branch only if:

- no tax return is filed;
- the tax return is filed late; or
- the book-keeping is not in accordance with normal business practices.

A comparison will then be made with at least three comparable taxpayers, and an absolute minimum of EUR47,800 of taxable profit per year will be applied.

5.6 Deductions for Payments by Local Affiliates

Belgium does not have specific standards for determining the deduction for payments by local companies for management and administrative expenses incurred by non-local affiliates. Any reasonable formula can be used (based on sales, staff or any other reliable criteria).

5.7 Constraints on Related-Party Borrowing

Belgium has a 5:1 thin capitalisation rule in place to limit the amount of deductible interest paid or owed by a local company – whether foreign-owned or not – to non-local ultimate beneficiaries. The interest on such loans (as well as on direct or indirect loans from lenders based in tax havens) is only deductible to the extent the tainted loans do not exceed five times the Belgian borrower's equity. In addition, for interest paid or owed directly or indirectly to tax-exempt or low-tax lenders, the burden of proof regarding the reality of the loans and the arm's length character of the interest rate is reversed; if the Belgian tax authorities reject the deductibility of such interest, it is up to the taxpayer to prove that the loans are real and genuine, and that the interest rate is at arm's length.

The interest on loans between related parties whose contract was concluded after 17 June 2016 is subject to the new interest deduction limitation based on EBITDA. For more information, please see **2.5 Imposed Limits on Deduction of Interest**.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

Belgian resident corporations are taxed on their worldwide income, unless Belgium's right to impose tax is limited by any provisions of a bilateral tax treaty. The rule whereby foreign-source income that was not exempt in Belgium by virtue of a bilateral tax treaty was reduced to one quarter of the normal Belgian tax rate was repealed several years ago. Under specific circumstances, Belgium allows a foreign tax credit for dividends, interest and royalties that were subject to withholding tax in the source country.

6.2 Non-Deductible Local Expenses

There are no specific rules in Belgium to attribute costs or expenses to foreign income that is exempt from corporation tax in Belgium pursuant to the application of a bilateral tax treaty provision. For example, interest on a loan to acquire foreign real estate is not non-deductible by default, even though the income from such real estate will normally be exempt in Belgium by virtue of the applicable tax treaty (if any).

6.3 Taxation on Dividends From Foreign Subsidiaries

In principle, dividends from subsidiaries (foreign or Belgian) are taxed in the hands of a Belgian corporate shareholder but, subject to several conditions, such dividends will be 100% deductible by virtue of the dividends-received deduction.

The main conditions for the dividends-received deduction to apply are that the participation must be at least 10% in the share capital of the subsidiary or must have an historic acquisition value of at least EUR2.5 million, and that such participation must have been maintained for an uninterrupted period of at least one year (not necessarily prior to the distribution of the dividend). In addition, a complex subject-to-tax test applies to prevent dividends that have not been sufficiently taxed at the level of the subsidiary being exempt in Belgium.

6.4 Use of Intangibles by Non-Local Subsidiaries

Please see **2.2 Special Incentives for Technology Investments** and **9.4 Competitive Tax Policy Objective** regarding the specific rules on taxing

income from intangibles developed by local corporations (and that may or may not be used by foreign subsidiaries). Other than that, the normal transfer pricing rules apply, which require the foreign subsidiaries to pay arm's length royalties or other remuneration for the use of such intangibles (as long as they are owned or licensed by the Belgian corporation). Also, the transfer of a locally developed intangible to a foreign affiliate will be required to be made on arm's length terms, and a (taxable) gain may have to be recognised and will be taxed in Belgium accordingly.

6.5 Taxation of Income of Non-Local Subsidiaries Under Controlled Foreign Corporation-Type Rules

At the end of 2017, Belgium introduced CFC rules that are mostly in line with the EU's ATAD, opting for the transactional approach. However, practitioners are of the view that those rules will rarely apply because an arm's length attribution of income to Belgium will normally follow from the application of the transfer pricing rules.

As of assessment year 2024, Belgium applies an entity approach, under which certain defined passive income (dividends, etc) of the CFC is taxable in the hands of the controlling company unless (among other things) the CFC has sufficient economic substance. In contrast to the previous regime, it would be much more effective in practice. For more information, please see **9.8 Controlled Foreign Corporation Proposals**.

6.6 Rules Related to the Substance of Non-Local Affiliates

There are no specific rules in Belgium to determine the substance of non-local affiliates, except the guidelines derived from a number of advance tax rulings in connection with interposed (mostly finance) companies in Luxembourg or other jurisdictions where interest, dividend or royalty income can be taxed at a low effective rate, with some planning. These criteria are quite formalistic (book-keeping, office space, knowledgeable local directors, complying with local tax and company laws, etc).

This does not mean that the syphoning off of *"Belgian"* profits to letterbox companies in low-tax jurisdictions will not be challenged on the basis of lack of substance in such jurisdiction, or even on the basis that such companies are effectively managed in Belgium and their profits are, therefore, subject to corporation tax in Belgium.

6.7 Taxation on Gain on the Sale of Shares in Non-Local Affiliates

Under appropriate circumstances, Belgium exempts capital gains on shares in Belgian or non-Belgian affiliates. The conditions for this capital gains exemption are, by and large, the same as those that apply to the dividends-received deduction. For more information, please see **6.3 Taxation on Dividends From Foreign Subsidiaries**.

7. Anti-Avoidance

7.1 Overarching Anti-Avoidance Provisions

Belgium has a General Anti-Abuse Rule (GAAR) in place, under which transactions that are set up with the sole or predominant aim of benefitting from an advantageous tax rule (a deduction, exemption, deferral, etc) or avoiding the application of a disadvantageous tax rule can be recharacterised by the tax authorities such 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 they had substantial non-tax motives for entering into the transaction in the way it was set up.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

In principle, Belgian corporate taxpayers are audited every other year. In most instances, corporate tax and VAT audits will be conducted simultaneously. There is expected to be a major focus on taxpayers in an international environment in 2025. Data mining-based audits will play a prominent role here; for larger taxpayers especially, data mining will be used to seek *"suspicious"* elements that would warrant a more thorough audit.

There is a special audit team that focuses on transfer pricing, which can identify potential targets on its own (with the help of data mining) or it can be informed by the local tax inspectorate if the latter believes that a taxpayer may have substantial transfer pricing issues. If there is a suspicion of fraud or aggressive tax abuse, the Special Investigation Service may start its own investigation, independent from the local tax inspectorate.

In addition to audits based on data mining, so-called joint audits with other member states are also being used more frequently. Going forward, it can be assumed that the use of this technique will continue to increase.

9. BEPS

9.1 Recommended Changes

The following BEPS recommended changes have already been implemented:

- Action 2 (anti-hybrid rule and anti-abuse rules);
- Action 3 (CFC regulation);
- Action 4 (financing cost surplus);
- Action 5 (innovation income deduction + common reporting standard);
- Action 6 (prevention of tax treaty abuse, implemented in Belgium through the MLI);
- Action 7 (definition of *"permanent establishment"*)
- 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 (the MLI).

9.2 Government Attitudes

The Belgian coalition government is generally in favour of BEPS – and the EU version of BEPS, ATAD I and ATAD II – and is seeking to comply with it without much *"gold plating"*. Belgium wants to stay competitive in order to attract inward investments from the most significant trading partners, such as the USA, Japan, Canada, Germany, France, etc.

Belgium implemented the European Directive on ensuring a global minimum level of taxation for multinational groups at the end of 2023. This fits within the framework of the OECD's Pillar Two initiative and has been applicable since 1 January 2024. In essence, the objective is that a qualifying multinational or *"substantial domestic group"* will pay at least 15% corporate tax on its *"excess profits"* in each jurisdiction in which it operates.

9.3 Profile of International Tax

Since the publication of LuxLeaks, the Panama Papers and similar reports, public interest

in international tax has grown substantially, which certainly increases pressure on the present coalition government to close a number of international loopholes (with BEPS-compliant anti-hybrid measures, the introduction of a BEPS-compliant interest limitation rule, etc).

9.4 Competitive Tax Policy Objective

The Belgian legislature has already transposed the BEPS and ATAD measures without much *"gold plating"*, to create a level playing field with other jurisdictions that offer similar non-tax benefits to potential or existing inward investors. A good example is the transformation of the Patent Income Deduction into the Innovation Income Deduction, which includes the nexus rule imposed by BEPS but widens the scope compared to the former regime and covers, inter alia, copyright-protected software (under the former regime, only income from patents was eligible for the beneficial regime, which entailed an 80% exemption of qualifying gross income, whereas the new regime exempts 85% of qualifying net income).

Also, the headline CIT rate has been reduced to 25%, in order to be competitive with jurisdictions such as the Netherlands and Luxembourg, which often compete for the same inward investments as Belgium.

In addition, Belgium has an interesting tax regime in place for employing highly qualified researchers working in the R&D industry in Belgium by allowing the employer to keep 80% of the wage withholding tax that must normally be transferred to the Revenue Service for itself, thereby substantially reducing the gross cost of employing such workers. Only 20% of the normal wage withholding tax has to be effectively transferred to the Revenue Service, while the employees are entitled to credit 100% against their personal income tax liability.

Yet another strong feature of Belgium's international tax system is the participation exemption, which now exempts 100% of qualifying dividends (up from 95%) and capital gains deriving from qualifying participations in other Belgian or non-Belgian companies.

Last but not least, a well-functioning Ruling Commission allows for reliable advance tax rulings on all kinds of anticipated investments and other transactions (including unilateral and multilateral transfer pricing issues), creating advance legal certainty in areas of law where there would otherwise be a relatively high degree of uncertainty and *"litigation risk"*.

9.5 Features of the Competitive Tax System

The most vulnerable feature of the Belgian (international) tax regime that remained after the transposition of BEPS and ATAD I and II was the so-called Expat Regime, which essentially provided for an attractive income tax regime for highly qualified workers temporarily seconded to Belgium. A new tax regime for inbound taxpayers and researchers came into force on 1 January 2022. The benefits of both favourable regimes lie in the exempted reimbursement of certain expenses, recurring additional costs and specific reimbursements, in addition to the salary. Under the new regime, expats will no longer be able to invoke the automatic granting of a non-resident tax status in Belgium, thereby eliminating the situation of tax statelessness.

9.6 Proposals for Dealing With Hybrid Instruments

Belgium has already implemented rules to deal with hybrid instruments, defining what is to be understood by the term *"hybrid mismatch"*.

Tax rules targeting hybrid mismatches cover the following, inter alia.

- Hybrid mismatch arrangements – profits of an EU-based establishment that are realised through such an arrangement and that are not considered taxable in the permanent establishment's jurisdiction will be taxable at the level of the Belgian head office.
- Hybrid entities – such entity incorporated or established in Belgium will be considered to be a taxable entity in Belgium if one or more associated non-resident entities is established in one or more jurisdictions that consider the Belgian entity to be taxable. The hybrid entity's income will be taxed in Belgium to the extent that it is not already taxed under the laws of Belgium or any other jurisdiction. This rule does not apply to collective investment vehicles.
- Hybrid mismatch payments – such payments are considered a non-deductible expense for the Belgian payer if the receipt thereof does not give rise to a corresponding inclusion at the level of the non-Belgian recipient.

While these new rules are very technical and complex, they would seem to be compliant with BEPS and ATAD, without too much overkill, although it remains to be seen how these highly technical rules will pan out in practice. On 22 October 2024, a circular letter was published regarding the rules transposed into Belgian law from the European directives aimed at combatting tax avoidance practices through hybrid mismatches.

9.7 Territorial Tax Regime

Belgium does not have a territorial tax regime. A Belgian resident company is liable to CIT on its worldwide profits and income, while a non-resident company is taxed in Belgium on its Belgian-source income only.

9.8 Controlled Foreign Corporation Proposals

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 ATAD. Under the new Belgian CFC rules (as of assessment year 2024), there is an entity approach under which certain defined passive income (dividends, etc) of the CFC is taxable in the hands of the controlling company unless (among other things) the CFC has sufficient economic substance. On 13 December 2024, a circular letter was published to clarify the amended CFC rules.

Said CFC rules stay defective in two significant ways:

- practitioners are of the view that the rules will rarely apply because an arm's length attribution of income to Belgium will normally follow from the application of the transfer pricing rules; and
- the above CFC rules may create situations of effective double taxation of the same income with different companies of the group, despite the specific measure to avoid double taxation.

Neither the EU ATAD nor the Belgian implementation thereof determines how double taxation is prevented if Belgium and another member state simultaneously apply their respective CFC legislation.

Multiple arguments can be made against the introduction of a sweeper CFC rule into Belgian law. For example, it seems at least unfair to tax the income of a foreign subsidiary with adequate substance just because it is a resident of a tax haven. In this respect, it must be noted that the Belgian rule excludes the income of the CFC to the extent that it is realised through its own significant people functions.

9.9 Anti-Avoidance Rules

In practice, it remains to be seen whether the double taxation convention limitation of benefit or anti-avoidance rules will have an impact in Belgium. In April 2018, Belgium's highest tax court (the Court of Cassation) ruled that income earned by a Belgian-resident sportsman from activities performed in the Netherlands remains tax exempt in Belgium (by virtue of Article 17 of the 2001 bilateral treaty between Belgium and the Netherlands), although the same income had not effectively been taxed in the Netherlands, and notwithstanding the *"subject-to-tax"* clause in the 2001 treaty. The inclusion of the subject-to-tax provision in Article 23(1) was seen as an anti-abuse provision, which should prevent double non-taxation. Please note that the same Court of Cassation ruled again on 6 September 2024 that such income (this time originating from a pension) must be exempted in Belgium, even if it was not effectively taxed in the Netherlands.

9.10 Transfer Pricing Changes

The Revenue Service has increased its attention on transactions whereby IP assets are transferred out of the country. In a notorious case, the Special Investigation Team of the Belgian Revenue Service challenged the transfer of a patent application to a non-Belgian related entity as *"sham"*. The case was decided in favour of the taxpayer by the Tribunal of First Instance, but the Revenue Service has appealed the case. The Court of Appeal later ruled again in favour of the taxpayer, stating that the transfer of the patent application had a real substance, rather than being *"sham"*.

9.11 Transparency and Country-by-Country Reporting

Most Belgian practitioners are not opposed to transparency or CbC reporting, with the following stipulations:

- administrative formalities and red tape should be kept within reasonable proportions;
- the additional revenue that is expected to be generated by such systems should lead to a reduction of the headline (corporate) income tax rates and/or the paying off of Belgium's public debt (which currently exceeds 100% of the country's GDP), rather than the creation of additional government spending; and
- when taxpayers comply with transparency and CbC reporting rules for several years in a row, they should earn *"compliant taxpayer"* label and enjoy less cumbersome and time-consuming tax audits in return.

9.12 Taxation of Digital Economy Businesses

No statutory changes have yet been made, but Belgium supports the OECD's initiatives to consider certain *"light"* forms of presence in the country as a permanent establishment to which profit has to be allocated (and taxed).

9.13 Digital Taxation

The Belgian coalition government is in favour of a multilateral approach toward digital taxation, preferably in co-operation with the OECD or EU. In the so-called Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, some countries, including Belgium, decided that the

withdrawal of already existing national digital tax regimes in countries that had already individually introduced a national digital tax will be co-ordinated. The European Commission was due to propose a directive on a tax for digital services during mid-2021. Although the rollout of a digital taxation remains high on the European agenda, this proposal is still on hold.

9.14 Taxation of Offshore IP

Belgium has not yet introduced any provisions dealing with the taxation of offshore intellectual property.