

International Tax Belgium Highlights 2018



Investment basics:

Currency – Euro (EUR)

Foreign exchange control – No

Accounting principles/financial statements – Belgian GAAP. IFRS is mandatory for consolidated accounts of listed companies and optional for consolidated accounts of other companies. Financial statements must be submitted annually.

Principal business entities – These are the corporation (SA/NV), limited liability company (SPRL/BVBA) and branch of a foreign company.

Corporate taxation:

Residence – A corporation is resident if its principal establishment, registered office or place of management is in Belgium.

Basis – Residents are taxed on their worldwide income. Belgian-source income of nonresident companies is subject to the nonresident income tax. In specific cases, nonresident companies without a taxable permanent establishment may be taxed on certain Belgian-source income if Belgium is allocated taxation rights based on a tax treaty concluded with the nonresident's state of residence; or, if there is no treaty, if the nonresident cannot demonstrate that the income has been effectively taxed in its residence state. In such a case, the Belgian payer of the income must withhold professional withholding tax at a rate of 16.5% (unless the rate is reduced under a treaty).

Taxable income – The taxable income of a resident company consists of annual worldwide income, less allowable deductions. Income from foreign real estate or branches located in countries with which Belgium has concluded a tax treaty is exempt (except for three

countries, where, under the relevant treaty, only a proportional reduction of the Belgian tax is granted).

Taxation of dividends – For taxable periods starting on or after 1 January 2018 and ending no earlier than 31 December 2018 (i.e. as from the tax year 2019 starting on or after 1 January 2018), a 100% dividends received deduction (DRD) is applicable for dividends received by a Belgian company from a domestic or foreign company (previously, 95% of such dividends was exempt from tax, with the remaining 5% subject to tax at the normal rate). Dividends qualifying for the DRD may not be (fully) deductible if the recipient company is in a loss position or if its available profits are insufficient. Excess DRD may be carried forward with no time limitation. For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the offset of the DRD carryforward and some other tax attributes (such as the current-year notional interest deduction and tax loss carryforwards) is limited to EUR 1 million + 70% of the taxable base.

The following requirements must be met to qualify for the DRD: (1) the shareholder must hold at least 10% of the share capital of the payer company or the participation must have an acquisition value of at least EUR 2.5 million; (2) the company distributing the dividends must be subject to corporate income tax on the profits out of which the distribution is made ("subject to tax" requirement); and (3) the shareholder must continuously have (or have had) full ownership of the qualifying shares for an uninterrupted period of at least one year.

Capital gains – Capital gains derived by a corporation on the disposal of tangible and intangible assets are subject to tax at the ordinary corporate tax rate. Tax deferral is possible, subject to certain conditions. Net gains derived

from the disposal of shareholdings in other companies are exempt if: (1) the subject-to-tax requirement for application of the DRD is met; (2) the shares have been held (with full ownership) for an uninterrupted period of at least one year; and (3) for taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the same minimum holding requirement that applies for the DRD is fulfilled, i.e. a shareholding of at least 10% or with an acquisition value of at least EUR 2.5 million (previously, no participation requirement applied). The 0.412% separate tax (including the relevant surcharge) that applied to the net amount of fully exempt capital gains on shares realized by large enterprises is abolished for taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018). Shares sold within the one-year holding period are taxable at a rate of 25.50% (reduced from 25.75%, due to a reduction in the applicable surcharge) for taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018).

Special rules apply to capital gains on shares in certain tax-neutral restructurings and to capital gains (and capital losses) on shares realized by "trading" companies for transfers to and from their "trading portfolio."

Losses – Losses may be carried forward indefinitely for corporate tax purposes, but may not be carried back. Restrictions apply in the case of a tax-free reorganization (e.g. merger, demerger or contribution) or a change in control that is not justified by legitimate financial and economic needs. The concept of control (i.e. legal control, factual control or joint control) is defined under Belgian company law. Not all items are available for offset (e.g. abnormal or gratuitous advantages received, the fairness tax and the secret commissions' tax). For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the offset of tax losses carried forward and some other tax attributes is limited to EUR 1 million + 70% of the taxable base.

Rate – For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the standard rate of corporate income tax is reduced from 33% to 29% (and will further reduce to 25% for taxable periods starting on or after 1 January 2020). For small and medium-sized companies (SMEs), the first bracket of EUR 100,000 of income is taxable at a rate of 20% for taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018) if certain conditions are satisfied (previously, SMEs were subject to special rates up to income of EUR 322,500).

Surtax – For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the surcharge imposed on the adjusted corporate

income tax liability is reduced from 3% to 2%, and the total effective tax rate (the standard rate plus the surcharge) is reduced from 33.99% to 29.58%. For taxable periods starting on or after 1 January 2020, the surcharge will be abolished, and the effective tax rate will equal the standard rate of 25%.

Alternative minimum tax – Although, strictly speaking, there is no alternative minimum tax in Belgium, a "fairness tax" at a rate of 5.15% (including the surtax) may be due from large companies that distribute dividends and, during the same taxable period, offset losses carried forward or a current-year notional interest deduction against their taxable income. The fairness tax is due only to the extent the dividend distribution exceeds the company's taxable base that is subject to corporate tax at the effective tax rate. Distributions of grandfathered reserves are excluded from the fairness tax.

The Court of Justice of the European Union (CJEU) ruled on 17 May 2017 that the fairness tax is partly incompatible with the EU parent-subsidiary directive, to the extent the tax applies to dividends received that are subsequently redistributed. In addition, the CJEU stated that a discriminatory situation could exist if the fairness tax is triggered in a case where a nonresident company with a Belgian permanent establishment distributes dividends of a purely non-Belgian origin; it is up to the Belgian Constitutional Court to confirm whether such a discriminatory situation exists, and a decision is expected in the first quarter of 2018. A draft bill abolishing the fairness tax is expected to be introduced into parliament in early 2018.

For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the offset of the tax loss carryforward, DRD carryforward and some other tax attributes (such as the current-year notional interest deduction) is limited to EUR 1 million + 70% of the taxable base. This limitation creates a minimum taxable base for corporate taxpayers.

Foreign tax credit – A tax credit is available for foreign withholding tax levied on foreign-source interest and royalties. For foreign-source interest, the foreign tax credit may be reduced based on a debt-funding ratio.

Participation exemption – See under "Taxation of dividends."

Holding company regime – All Belgian companies and Belgian branches of foreign companies can benefit from the participation exemption, without having to satisfy any additional conditions.

Incentives – Various investment deductions and R&D tax credits exist for R&D-related activities.

Under the notional interest deduction (NID), Belgian companies and Belgian branches of nonresident companies are entitled to deduct a deemed interest expense in connection with qualifying equity, which is 0.746% for multinationals and 1.246% for SMEs for taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), increased from 0.237% for multinationals and 0.737% for SMEs. For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the NID will be granted only on the incremental increase in equity (calculated by comparing the current year NID equity with the NID equity of the fifth preceding taxable period). Excess NID cannot be carried forward to subsequent taxable periods. For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the offset of some tax attributes, including the current-year NID, is limited to EUR 1 million + 70% of the taxable base.

The patent income deduction (PID) was abolished with effect from 1 July 2016, but grandfathering provisions apply until 30 June 2021. Under the PID, Belgian companies and permanent establishments of nonresident companies were allowed to deduct 80% of income from royalties and income deemed to be sourced from patented intellectual property. Consequently, with respect to patents for which a request was filed before 1 July 2016, or approved patents or licenses acquired before 1 July 2016, the PID can continue to apply until 30 June 2021.

With retroactive effect as from 1 July 2016, an innovation income deduction (IID) of 85% net innovation income received has been introduced for income from patents, supplementary protection certificates, qualifying copyright protected software and various other intellectual property (IP) rights. Qualifying income, which is calculated using a nexus formula, also includes capital gains derived from the sale of qualifying IP, embedded royalties and infringement compensation. Unused IID may be carried forward. For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the offset of some tax attributes, including IID carryforwards, is limited to EUR 1 million + 70% of the taxable base.

A tonnage tax regime applies to shipping companies. The regime has been approved by the European Commission until the end of 2022.

Withholding tax:

Dividends – Under 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 at least 10% of the company paying the dividends, provided the participation is held for an uninterrupted period of at least one year. The same rule applies to dividends paid to shareholders resident in a country that has concluded a tax treaty with Belgium where the treaty contains an exchange of information clause. As from 1 January 2018, an exemption also applies to qualifying shareholders established in a European Economic Area (EEA) member state or a country with which Belgium has concluded a tax treaty containing an information exchange clause, if the shareholder owns a shareholding in the Belgian payer company of less than 10% but with an acquisition value of at least EUR 2.5 million for an uninterrupted period of at least one year (previously, such dividends were subject to a reduced withholding tax of 1.6995%). This change is in response to the increase in the DRD from 95% to 100% (see under "Taxation of dividends"). If no exemption applies, a reduced withholding tax rate can apply under an available tax treaty.

Where no exemption or reduced rate applies, the default rate is 30%. The withholding tax on liquidation dividends also is 30% and a specific liquidation reserve regime applies for SMEs, under which, subject to certain conditions, no additional withholding tax is due upon liquidation if a separate 10% tax is prepaid upon the creation of the reserve. A reduced 15% withholding tax rate applies to certain dividends relating to shares issued in exchange for cash contributions into SMEs.

As from 1 January 2018, capital decreases and reimbursements of assimilated issue premiums and profit shares are partially treated as dividend distributions for income tax purposes, thus triggering the levy of withholding tax. The capital decrease will be allocated to fiscal capital and to reserves according to a pro rata coefficient. The portion allocated to fiscal capital is excluded from the "taxable dividend" definition, and thus exempt from tax. To the extent the capital decrease is allocated to reserves, a "taxable" dividend is distributed, triggering withholding tax. Corporate tax may be due to the extent that the capital decrease is allocated to tax-free reserves incorporated into capital.

Interest – Interest paid to a nonresident generally is subject to a 30% withholding tax (or 15% for interest from certain specific government bonds and interest from regulated savings deposits exceeding certain thresholds), unless the rate is reduced under a tax treaty or an exemption applies under the EU interest and royalties directive or domestic law. Interest paid by finance companies and holding companies, interest paid to financial institutions in treaty countries and certain other

forms of interest are not subject to withholding tax under Belgian domestic law under certain conditions.

Royalties – The withholding tax on royalties is 30% (or 15% for income from author's and "neighboring rights" and from legal and compulsory licenses), reduced by a standard expense deduction of 15%. The rate may be reduced or eliminated under a tax treaty. No withholding tax is levied on royalty payments made to qualifying associated EU companies under the EU interest and royalties directive.

Technical service fees – No, but a 16.5% professional withholding tax may apply in certain cases (see under "Basis," above).

Branch remittance tax – No

Other taxes on corporations:

Capital duty – No, except for a fixed fee of EUR 50. An exception may apply in the case of "mixed" contributions.

Payroll tax – A payroll tax is withheld on remuneration and pensions paid to resident or nonresident employees and directors for whom such payments constitute taxable professional income. Partial professional withholding tax exemptions are available for certain types of employees (e.g. researchers) or employment (e.g. overtime work, night work and shift work, work in aid zones).

Real property tax – A tax is levied on income from immovable property located in Belgium and is computed as a percentage of the notional annual rental value of the property. The rate varies depending on the region in which the property is located: the rate is 2.5% of the cadastral income for the Flemish region and 1.25% for the Walloon and Brussels regions. Local surcharges apply, depending on the municipality where the property is located.

Social security – Employer contributions equal approximately 38% of the gross salary for blue-collar employees and approximately 32% of the gross salary for white-collar employees. Companies with fewer than 20 employees pay slightly less. Under the 2015 "tax shift agreement," the maximum effective employer contribution for white-collar employees was lowered to approximately 27% on 1 January 2018. The social contributions are due on the gross salary. Certain elements of the salary are subject to a special contribution (e.g. a CO₂ solidarity contribution for the private use of a company car, a contribution of 8.86% due on the employer's contribution for group insurance and a 1.5% contribution on extra-legal pension premiums exceeding certain thresholds). Social security contributions are deductible business expenses for corporate income tax purposes.

Stamp duty – No, subject to certain exceptions, such as the stock exchange tax on transactions in public securities and other financial instruments.

Transfer tax – Transfer taxes apply to the transfer and leasing of real estate located in Belgium, at rates ranging from 0.2% to 12.5% (depending on the type of transaction and the region in which the property is located).

Other – A "secret commissions" tax at a rate of 50% or 100% (increased by a surcharge) applies to certain remuneration, fees and commissions that are not properly documented and that have not been taxed in the hands of the beneficiary. For taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018), the surcharge is 2%, bringing the rate to 51% or 102%, respectively (previously, the surcharge was 3%, bringing the rate to 51.5% or 103%, respectively).

Anti-avoidance rules:

Transfer pricing – Transactions between related companies and between a head office or other branches of a foreign company and the Belgian branch must be at arm's length. A deemed profit can be imputed in non-arm's length transactions. Statutory documentation requirements (master file, local file and country-by-country reporting) apply to multinational enterprises for financial years starting on or after 1 January 2016.

Thin capitalization – No thin capitalization rules exist, except in the following cases: (1) receivables from certain direct shareholders or individuals or from directors, managers and liquidators (individuals or legal entities) of the company (including loans from spouses and children), where a 1:1 debt-to-equity ratio applies; or (2) intragroup loans and loans from entities not subject to tax or subject to a tax regime that is significantly more advantageous in respect of interest than the Belgian tax regime, where a 5:1 debt-to-equity ratio applies (with some exceptions).

Controlled foreign companies – For taxable periods starting on or after 1 January 2019, CFC rules will be applicable in Belgium.

Disclosure requirements – As noted below, payments related to transactions with entities resident in tax haven countries (i.e. non-EEA low-tax jurisdictions and jurisdictions that have not substantially implemented the internationally agreed tax standard on exchange of information, as determined by the OECD, at the time of the payment), as well as to establishments located in tax haven countries or bank accounts managed by residents or establishments located or domiciled in such countries,

must be disclosed in an annex to the corporate tax return.

Payments by employers in relation to extra-legal pension schemes and pensions and allowances must be disclosed.

Other – In limited circumstances, certain purely tax-driven transactions may be recharacterized under the general anti-abuse provision or under specific anti-abuse provisions.

Interest, royalties and other fees paid directly or indirectly to a beneficiary in a tax haven country or to a company benefiting from a special tax regime are not deductible for tax purposes unless they are at arm's length and relate to "real and genuine" transactions.

Payments made to tax havens and jurisdictions that have not substantially implemented the internationally agreed OECD tax standard on exchange of information must be reported on a special form to be annexed to the annual corporate income tax return and are deductible only if they relate to real and genuine transactions with persons and not artificial arrangements.

Compliance for corporations:

Tax year – The tax year is the accounting year, which may be the calendar year or any other 12-month period.

Consolidated returns – Consolidated returns are not permitted. Each company must file its own return.

Filing requirements – The tax return must be filed at least one month after the date the financial statements are approved by the annual general meeting of the shareholders, but no later than six months after the end of the financial year. The tax authorities can grant an extension of the filing date at the request of the taxpayer.

Penalties – Penalties apply for failure to comply with the tax provisions or failure to make advance payments based on estimated annual income. A 6.75% surcharge applies to underpayments of tax for taxable periods starting on or after 1 January 2018 (and ending no earlier than 31 December 2018). Administrative penalties for noncompliance with the tax provisions range from 10% to 200% of the tax due; criminal sanctions may apply in cases of tax fraud.

Rulings – A taxpayer may submit a written request for an advance ruling with respect to the income tax consequences of a proposed transaction with the Federal Ruling Commission.

Personal taxation:

Basis – Individuals whose domicile is in Belgium are considered residents. They are subject to Belgian resident income taxation, in principle, and are taxed on their worldwide income. This taxation occurs at the federal

(national) and regional (Flanders, the Walloon region or Brussels) levels.

Nonresidents pay tax only on Belgian-source income. Executives on a temporary assignment in Belgium may apply for the special expatriate regime.

Residence – For federal income tax purposes, an individual is resident in Belgium if his/her domicile is in Belgium during the income year. This is determined based on the relevant factual circumstances, and generally coincides with the taxpayer's center of vital interests.

The domicile of a married taxpayer is irrefutably deemed to be the place where the taxpayer's family is established. Furthermore, an individual who is listed in the national register (i.e. an individual with a work permit or, for an EEA national, a residence permit) is deemed to have his/her domicile in Belgium, unless otherwise demonstrated.

If the domicile is not located in Belgium, an individual can be considered a Belgian tax resident if his/her seat of wealth (i.e. the place where the taxpayer manages his/her estate) is located in Belgium.

If subject to the special expatriate regime, certain foreign nationals living in Belgium before working for a foreign firm may retain nonresident status.

For regional income tax purposes, the individual's tax domicile on 1 January of the assessment year is decisive when determining to which regional system a Belgian resident is subject.

Filing status – A married couple (or legally cohabitant partners) living together must file a joint statement, but their incomes are not aggregated.

Taxable income – Residents are taxed on their worldwide income from movable and immovable property, as well as their worldwide professional and miscellaneous income. Foreign-source income may be exempt based on a tax treaty. The exemption is applied "with reserve of progression" so that the net exempted income is taken into account when determining the applicable tax rates on the total income. There also is a notional rental value for property held in Belgium (except for the taxpayer's family dwelling).

Capital gains – Capital gains on assets derived by individuals engaged in business activities generally are taxed in a similar manner to gains derived by corporations. Capital gains on shares qualifying as professional income normally are taxed at the ordinary individual income tax rate. Capital gains derived from fixed tangible assets that have been used for business activities for more than five years are taxed at a 16.5% rate (increased by the communal surcharge). Capital

gains derived by individuals not engaged in business activities are not taxable unless the capital gains are related to a speculative transaction, the sale of immovable property within five years (buildings) or eight years (land) from the time of acquisition or the sale of a substantial participation to a non-EEA-based company.

All other private capital gains are, in principle, tax exempt.

Deductions and allowances – A number of deductions may be taken from gross taxable income, including business expenses, social contributions and 80% of alimony payments. A tax-free personal allowance is granted to the taxpayer based on his/her personal situation (single, dependent children, etc.). These deductions and allowances apply for all resident taxpayers, and for nonresident taxpayers receiving more than 75% of their income from a Belgian source.

Rates – Rates are progressive up to 50% (increased by communal surcharges ranging from 0% to 9% of the tax bill).

Other – A number of tax credits may be claimed, such as for charitable donations, premiums for endowment-type life insurance policies, real estate investments, service vouchers, contributions to pension plan savings, etc. These credits apply for all resident taxpayers, and for nonresident taxpayers receiving more than 75% of their income from a Belgian source.

Other taxes on individuals:

Capital duty – No, except for a fixed fee of EUR 50.

Stamp duty – No, except for a limited (i.e. capped) stock exchange tax on certain transactions in financial instruments (issuances, transfers) through the stock exchange.

Capital acquisitions tax – A 12.5% tax is levied on the acquisition of real estate in the Walloon and Brussels regions, and 10% on the acquisition of real estate in the Flemish region. A reduced rate is available in certain cases, in all regions.

Real property tax – An annual tax applies to the annual notional rental income of owned land, buildings and industrial equipment. The rate varies depending on the region in which the property is located: the rate is 2.5% of the cadastral income for the Flemish region and 1.25% for the Walloon and the Brussels regions. This tax is not deductible from the personal income tax.

Inheritance/estate tax – For spouses, legal cohabitants and descendants, the inheritance tax ranges from 3% to 30% in the Walloon and Brussels regions, and from 3% to 27% in the Flemish region. Lower rates apply

in some cases. Higher inheritance tax rates (up to 80% in Wallonia and Brussels and 65% in Flanders) apply to more distant relations and unrelated beneficiaries. Similar rates apply for gifts relating to immovable property, while low gift tax rates (between 3% and 7% in the Flemish and Brussels regions and between 3.3% and 7.7% in the Walloon region) apply to movable property.

Net wealth/net worth tax – No

Social security – The general employee contribution rate is 13.07% of the gross remuneration.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – The annual tax return generally must be filed by 30 June of the year following the tax year. Salaried individuals and directors are subject to payroll tax withholding at source. Although taxes normally are withheld at source, individuals on a split payroll may need to pay additional taxes. Self-employed individuals are required to prepay estimated tax under principles similar to those applied to businesses.

Penalties – Administrative penalties for noncompliance with the tax provisions range from 10% to 200% of the tax due. Criminal sanctions (including incarceration and fines) may apply in cases of tax fraud.

Value added tax:

Taxable transactions – VAT is levied on the provision of most goods and services.

Rates – The standard VAT rate is 21%; reduced rates of 12%, 6% and 0% apply in certain cases.

Registration – There is no de minimis threshold applicable in Belgium, except for distance sales by a foreign mail order company to Belgian individuals, in which case a threshold of EUR 35,000 applies.

Filing and payment – The VAT return must be filed monthly or quarterly and any tax due must be paid at that time. Advance payments may be required.

Source of tax law: Income Tax Code; VAT Code

Tax treaties: More than 90 tax treaties are in force. Belgium signed the OECD multilateral instrument on 7 June 2017.

Tax authorities: FOD *Financiën*/SPF Finances (federal tax administration)

Contact:

Geert Lowagie (glowagie@deloitte.com)

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see <https://www.deloitte.com/about> to learn more about our global network of member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients’ most complex business challenges. To learn more about how Deloitte’s approximately 225,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.