CORPORATE LAW IN BELGIUM

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I. Compliance with regulations concerning foreign investments in Belgium

General:

1.1. Foreign investments in Belgium are not subject to any specific administrative restrictions although mandatory declarations or permits are required in special cases (e.g. banking, insurance or transport). Foreign entities in general have the same rights and obligations as Belgian identities. In general, investors are able to acquire or participate in Belgian companies or create their own legal entity, buy or rent property, without having a minimum amount to invest or to create a minimum number of jobs.

Specific investment incentives granted by both federal and regional authorities responsible are largely available. The regions (Brussels, Flanders and Wallonia) have the responsibility for creating financial incentives and are in most cases also responsible for employment incentives (e.g. reduction on social security contributions or training facilities). The level of possible incentives may vary from region to region subject to applicable European legislation on state aids. These incentives may be taken into consideration in the selection by the foreign company of the place where it wishes to locate its business activities in Belgium.

Regulated activities:

1.2. Certain activities are regulated and an investor must check whether he satisfies the required conditions in order to carry out these activities.

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1 These activities may be regulated by federal or regional law. For example the performance of intermediary recruitment services in relation to employment or the performance of services in the tourism sector are subject to regional regulations (Brussels, Wallonia or Flanders) and are subject to a specific license.
II. Procedures and formalities for setting up a business:

Crossroads Bank for Undertakings ("Kruispuntbank van Ondernemingen/"Carrefour des Entreprises"): 

2.1. The Commercial Register as such has been abolished some years ago. Anyone who starts a new business either as a sole trader, though a branch office or in the form of a legal entity, should register with the Crossroads Bank for Undertakings. Registration in the various registers (Register for Legal Entities, VAT-Register and Social Security Register) has been centralized in the Crossroads Bank for Undertakings. After registration of a company, in the Register for legal entities with the Commercial Court Register a specific company identification number ("ondernemingsnummer" or "numéro d'entreprise") will automatically be given to the undertaking.

Activation of registration number of the Crossroads Bank for Undertakings:

2.2. The undertaking has to activate this number either itself or through a recognized one-stop-shop ("guichets d'entreprise" or "ondernemingsloketten"). This must be done before the start by the undertaking of its commercial activities. In this way the undertaking acquires its commercial status. Based on the number of employees, the projected turnover and the shareholder class (e.g. private individuals) the company will qualify as a small or medium sized undertaking.

VAT-Status:

2.3. The undertaking can activate its VAT-status itself or through a recognized one-stop-shop with the Crossroads Bank. It may also directly register with the VAT-authorities.

Registration for Social Security:

2.4. The undertaking should also register with the social insurance fund for self-employed persons within 3 months after incorporation. This may also be done with the Crossroads Bank by the company itself or through a recognized one-stop-shop. The company must pay into this fund a yearly contribution (2010: max: € 868.00); If the undertaking has employees in Belgium it should

2 The notary may register the deed of incorporation electronically with the Commercial Court after which an unique company registration number will be granted.
register also with the Belgian social security administration for salaried workers and employees.

Certificate on required qualifications on business management and professional qualifications (for regulated activities):

2.5. For small or medium size enterprises, activation of the company’s registration with the Crossroads Bank for Undertakings will be possible only once a certificate on required qualifications on business management and professional qualifications (for regulated activities) has been obtained. The person responsible for daily management of the undertaking must show his/her knowledge of business management with documentary proof of education or practical experience. Managers must prove basic knowledge of corporate management under penalty of refusal of the Company’s registration with the Crossroads Bank for Undertakings. Such proof can be given by presenting a copy of a college or university degree or of professional experience of 3-5 years. However, due to equivalency rules, this formality may sometimes reveal itself as cumbersome for foreigners. It can be bypassed if the company can prove that its parent company does not qualify as a small or medium sized company (i.e. more than 50 employees, turnover above EUR 7,000,000 and balance sheet exceeding EUR 5,000,000).

Timeframe:

2.6. A company will officially come into – legal - existence when it has been duly registered in the Register for Legal Entities administered by the Commercial Court. It can only start its commercial activities if its business has been registered with the Crossroads Bank of Undertakings. Provided that all documents have been duly prepared and the initial share capital has been made available to the company, it is possible to start up a business in Belgium within 3 days. Taking into account the preparation of these documents and in case of foreign investment the fact that sworn translations into one of the official languages may be necessary it is more realistic to expect a time frame of 3-4 weeks for setting up a business in Belgium.
Expenses:

2.7. The expenses for setting up a public or private limited company\(^3\) consist of:

- Preparation of financial plan by accountant;
- Notary fees to be calculated as a percentage on the amount of the share capital of the company;
- A minimal fixed registration fee with the Commercial Court;
- Costs of publication in the Belgian Official Journal;
- Registration with the Crossroads Bank of Undertakings;

Required documents to be registered:

2.8. Whatever the form of the company which the investor has chosen, the following documents have to be prepared in Dutch, French or German\(^4\), depending on the seat of the company and registered with the Commercial Court Registry where the company has its seat\(^5\)^6:

- An excerpt of the deed of incorporation and articles of association including the legal form, the names of the founding shareholders, the company name, its corporate object, the authorized, issued and paid up capital, any contribution in kind together with a valuation report by chartered accountants, the directors and their powers, the financial year, details proxyholders, appointment of auditors, (if applicable), evidence of payment of capital;

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\(^3\) In case of a public company with the minimum required share capital the total costs for incorporation, registration and publication will be as from around € 2500.00.

\(^4\) If the company seat is in Flanders, the language is Dutch, in the Walloon Region French and in Brussels either Dutch or French.

\(^5\) Belgium applies the system of the “siège réel”, which means that the seat of a company is the place which serves as the principal place of business for the company’s management (cf. the concept of the “registered seat”, which is the seat mentioned in the deed of incorporation and articles of association, but which should not necessarily coincide with the place that serves as the principal place of business for the company’s management).

\(^6\) For registration formalities for branches see under
- Resolution of the directors’ appointment, copies of their passports or identity cards. All documents in a foreign language must be translated through a sworn translator into Dutch, French or German depending on the applicable language;

III. Business structures

The business structure will depend on the kind of the business, the investor’s strategy and the degree of independence that the Belgian operations are to have from the parent company. For their activities in Belgium foreign companies normally use the structure of either a branch, a public limited company (“NV”/“SA”) or a private limited liability company (“BVBA”/”SPRL”). For this reason we will mainly focus on these forms of structures and will only briefly mention other available structures with their main characteristics.

Branches (“succursales” or “bijkantoren”)

3.1. A foreign company may carry out business activities in Belgium by establishing a branch office in Belgium. A branch operates on behalf of and under the management of a foreign parent company.

No separate legal entity:

The branch does not have its own legal personality. It is a part of its “parent company”. Therefore, the foreign company is directly liable for any engagements incurred by the branch.

Registration formalities and required documents:

Any foreign company governed by the laws of one of the member states\(^7\) of the European Union and which establishes a branch office in Belgium shall register the following information and documents with the Belgian Commercial Court Registry (“Dienst Akten van Vennootschappen/Service Actes de Société”). An

\(^7\) The registration formalities for non-EU foreign companies are essentially the same.
apostille\textsuperscript{8} should be affixed to all of these documents. All documents should be accompanied by a sworn translation in Dutch, French or German, depending on the address of the branch:

- A copy of the deed of incorporation and articles of association of the foreign company;
- The name and the legal form of the foreign company;
- The foreign register as referred to in art. 3 of Council Directive 68/151/EEC and the registration number;
- A recent certificate of registration in the foreign register;
- The address and the activities of the branch as well as the name under which the branch will operate, if different from the name of the foreign company;
- The appointment and the identity of the persons\textsuperscript{9} who have the powers to represent the foreign company towards third parties and to represent the company in law:
  a) As body of the foreign company or as member thereof;
  b) As special representative of the company for the activities of the branch with indication of powers;
- Most recent published accounts of the foreign company, if the foreign company has to publish such accounts under its domestic legislation\textsuperscript{10};
- Resolution of the decision by the foreign company to open the branch in Belgium, the permissible scope of the activities of the branch, the name(s) and powers of the legal representative(s) of the branch and the chosen name, if different from the name of the “parent company”;

Crossroads Bank for Undertakings:

The branch should also be registered with the Crossroads Bank for Undertakings through a Business One Stop Shop, where specific information concerning the foreign company, the branch and the legal representative(s) should be registered.

\textsuperscript{8} If the parent company is governed by the law of a country which is not a party to the The Hague Treaty for the Abolition of the Requirements of Legalization of Foreign Documents (5 October 1961) and no bilateral treaty exist between that country and Belgium, all rules concerning legalization of documents should be respected.

\textsuperscript{9} A branch office should be staffed by at least one person in Belgium who has the authority to enter into legal obligations towards third parties on behalf of the foreign company.

\textsuperscript{10} Annual accounts shall be deposited with the Belgian National Bank;
Publication in the Belgian Official Gazette:

An extract of the decision by the foreign company to establish the Belgian branch will be published in the Annexes to the Belgian Official Gazette ("Moniteur Belge"/"Belgisch Staatsblad").

VAT-Status:

If the activities of the branch are subject to VAT a so called declaration of the start of economic activities should be filed either directly with the VAT authorities or through one of the One-Stop Shop,* after which the VAT authorities will activate the VAT status within a couple of days.

Bookkeeping requirements:

A Belgian branch of a foreign company is required to keep separate books for its operations in accordance with Belgian accounting standards. This requirement applies also if the “parent company” is not required to publish its annual accounts under its domestic law.

Representative Office:

3.2. A foreign company may set up a representative company if its activities are strictly auxiliary. The representatives of a representative office cannot have the power to conclude agreements on behalf and in the name of the foreign company. A representative office is not subject to registration, publication and accounting requirements like a branch office or a subsidiary company. A representative office does not have an officially recognized status under Belgian law and is not registered with the Crossroads Bank of Undertakings. Because of the limited scope of the activities which can be carried out by a representative office, a representative office is not often of practical use.
Subsidiary companies:

Public Company ("Société Anonyme"("SA")/"Naamloze Vennootschap"("NV");

3.3. Since the public company ("Société Anonyme"–"SA"/"Naamloze Vennootschap"–"NV") is the form of company which is most commonly used by foreign investors for their activities in Belgium, particular attention will be given to this form of company.

The company is incorporated under a notarial deed and acquires legal personality as from the moment of registration with the Commercial Court.

a. Requirements before incorporation:

- Draft articles of association (for minimum provisions see below under b);\(^1\)
- Proxies by founding shareholders are possible (in some cases in notarial form);
- Submission of a financial plan to the notary, preferably to be prepared by an accountant or statutory auditor, indicating that the company’s share capital will be sufficient to conduct the business of the company for at least the first 2 years of its existence\(^2\)
- Bank certificates confirming the cash contributions on share capital by founding shareholders on a bank account opened with a financial institution in Belgium;
- Two special reports to be deposited with the Commercial Court Registry on the valuation and use of investments in case of contribution in kind by founding shareholders on share capital.

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\(^{1}\) See also annexe to this chapter

\(^{2}\) In Dutch in Flanders, in French in the Wallonia, in either Dutch or French in Brussels and in German in the German speaking region.

\(^{3}\) The notary will keep the financial plan confidential in his file. In case of bankruptcy of the company within 3 years as from the date of incorporation, the Court may review this plan. If the Court concluded that the capital at incorporation was clearly insufficient to cover the activities of the company during the first 2 years of its existence, it may hold the founder shareholders personally and severally liable for the debts of the bankrupt company.
capital. Clear overvaluation of contributions in kind may lead to joint and several liability of the founding shareholders;

b. Requirements and provisions in the notarial deed of incorporation and articles of association:

Corporate object:

Detailed description of the authorized activities of the company to be supplemented by a more general provision covering ancillary activities and powers related to the company’s corporate object.

Corporate name:

Corporate name, which may be any name except that it should differ from already existing company names and should not infringe upon any trademark rights held by third parties.14

Registered office:

The seat of the company should be mentioned in the articles of association. The seat should correspond to the place that serves as the principal place of business for the company’s management.

Capital and shares:

- Minimum share capital: € 61,500.00 to be entirely subscribed and to be entirely paid up at incorporation. In addition 25% of each share should be paid up. Share capital corresponding fully or partly with an investment in kind must be paid up within 5 years as from the date of incorporation.15

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14 A previous search on existing company names and trademarks is not compulsory, but certainly advisable. However, there is no formal registration system for company names in Belgium.
15 If the netto assets of the company fall below 50% of the Company’s capital, the meeting of shareholders shall decide on liquidation or take measures which should safeguard the continuation of the company. The Board of directors should propose such measures, unless the company is liquidated. A majority vote as in the event of amendment of the articles of association is required. The same applies if the net value falls below ¼ of the capital, provided that liquidation takes place in the event of a majority of ¼ of the shareholders’ votes cast.
• Minimum number of shareholders (natural or legal persons): 2.\textsuperscript{16}

• Nature of shares: registered (name) shares or shares in dematerialized form.\textsuperscript{17} The liability of the shareholders is limited to shareholder’s participation in the company, except in specific circumstances.

• Except in special cases (e.g. amendment of articles of association), decisions by the shareholders meeting are taken by a simple majority.

• Capital increases: to be approved at a shareholders’ meeting by a majority as required for an amendment of the articles of association of the company: a majority of the shareholders should be present but subject to approval of at least \( \frac{3}{4} \) of the votes cast. The company’s articles may be provide that the board of directors for a period of maximum 5 years has the powers to increase the share capital of the company up to the authorized capital as established in the articles. The powers may be subject to certain limitations as stated in the articles. The decision by directors to increase the share capital should be enacted before the notary.

Transfer of shares:

• Transfer of shares: unless the articles of the company provide otherwise, registered and dematerialized shares of a public company may be freely transferred. The transfer of shares may be restricted in the articles or even in agreements with third parties (e.g. approval and/or preemption clauses). These restrictions should always be limited in time.\textsuperscript{18}

\textsuperscript{16} If after incorporation the number of shareholders falls below the number of 2 for any period longer than 12 months, the sole remaining shareholder shall become jointly and severally liable for the debts of the company.

\textsuperscript{17} As from 1 January 2008 companies were no longer allowed to issue bearer shares. Existing bearer shares should be converted in registered shares or shares in dematerialized form before 1 January 2014. If no conversion takes place bearer shares will automatically be deemed to have been converted in dematerialized form or, if the articles do not provide for these, in registered shares.

\textsuperscript{18} In the event of disputes between one or more shareholders holding at least 30% of the voting rights (20% if the company has issued non-equity securities) or at least 30% of the share capital, can, if they have valid reasons, request the Commercial Court for an order against the other shareholder to transfer his or her shares to them.
General Meeting of shareholders:

- A general meeting of shareholders should be called at least once a year to:
  - approve the annual accounts, the auditor's report, the board of director's annual report;
  - to decide upon the profit distribution;
  - to fix the remuneration of the directors and to evaluate their performance;

- An extraordinary meeting of shareholders may be called by the board of directors, the statutory auditor or by a shareholder holding at least 1/5 of the share capital;

- Since 2002 it is possible to hold shareholders meetings in writing, provided that the decisions are taken unanimously and do not require authentification;

- Shareholders’ decisions are normally taken by a simple majority of votes cast. However special majority and quorum requirements may be applicable under company law or may be included in the articles of the company.\(^{19}\)

Management of the company:

Board of Directors:

- Directors: the company is managed by at least 3 directors (2 directors in case of only 2 shareholders). There are no requirements on nationality or residence. Directors can be natural persons or legal persons. If a legal entity serves as a director, it shall appoint a natural person as its permanent representative, who will have the same liabilities as if he or she was a member of the board. The maximum term of office is 6 years. However the term of appointment is renewable. A

\(^{19}\)Decision Voting agreements in for instance shareholders agreements are valid and enforceable. These agreements shall always be limited in time.
director may be removed from the board at any moment. The Board of Directors will normally appoint a President and a Secretary amongst its members.

Appointments and dismissals of directors have to be published in the Belgian Official Gazette.

Representation:

- The Board of Directors as a collective body represents the company towards third parties. The articles may provide that one or more directors either acting individually or acting jointly may represent the company.

Duties and liabilities of directors:

- Duties and liabilities of directors: the directors have the powers and responsibility to manage all of the activities of the company, except for those activities which are entrusted under the Companies Act to the shareholders. Should they have any conflict of interest of a financial nature in case of decisions to be taken by the Board of directors, a special procedure applies. Company directors are liable for the fulfillment of the tasks entrusted to them on the basis of general principles of law. Towards the company and third parties they are jointly and severally liable, for losses which are the result of infringement of the Companies Act and/or the company’s articles of association. Directors are released from this liability if they prove that they are not at fault and that they have informed the first coming general meeting of shareholders or the first meeting of the Board of Directors. Also in the event of bankruptcy, directors may be held personally liable and sometimes both personally and jointly and severally liable under certain conditions by both either the Receiver or creditors for the losses incurred in case of apparent gross shortcomings or gross negligence. The same principles apply as to liability of members of management committees and members of the daily management.
Management Committees:

The articles may provide that the board of directors delegates one or more powers in specific areas to one or more management committees. However this delegation may not concern the general policy of the company. The management committee consists of more persons, who are directors or non-directors. The members of the management committee may be given individual or joint powers of representation of the company. The special procedure on conflict of interest also applies here. Companies listed on the stock exchange in general must have an audit committee, composed of at least 1 independent director.

Day to day management:

The daily management of the company may be delegated to one or more persons, who can, but need not be shareholders.

Accounting:

The Board of Directors shall submit each year in any case within 6 months after the end of the financial year draft accounts and a explanatory report to the general meeting for approval. After approval the accounts shall be deposited with the National Bank. Each company which does not qualify as a small non-listed company is subject to periodic (usually annual) audit of its accounts by statutory auditors appointed by an ordinary shareholders meeting.

Statutory auditors:

A statutory auditor has to be appointed only if the company exceeds two of the three following thresholds:

- € 3.650.000.00 of the total assets in the balance sheet
- € 7.300.000.00 of turnover
- 50 employees
Private Limited Liability Company (« Besloten Vennootschap met Beperkte Aansprakelijkheid» (« BVBA »)/ »Société à Responsabilité Limitée (« SPRL »)\(^{20}\)

3.4. A private limited company is set up mostly for smaller and medium sized business. The main difference with the public company is that its shares cannot be freely transferred, except to existing shareholders and certain categories of persons (e.g. close relatives). This company is therefore not suitable if the company wishes to acquire capital from the general public or wants to be listed on a stock exchange.

The incorporation process and subsequent registration with the Commercial Court and the Crossroads Bank of Undertakings is essentially the same as for the public company (“S.A.” or “N.V.”) (see above).

Main characteristics BVBA/SPRL:

Share capital:

- Minimum capital stock: € 18,550.00, of which € 6,200.00 has to be paid up at incorporation\(^ {21}\), with the understanding that each share representing contributions in cash should be paid up to at least 1/5 of its par value. Shares representing contributions in kind should be fully paid up. As for public companies valuation reports should be submitted. Capital to be divided into equal shares, all to be registered in a shareholders register to be kept at the seat of the company;
- Minimum number of shareholders: 2 either natural or legal persons as in the case of one-person private limited company;
- Liability of the shareholders: in principle limited to shareholder’s participation on the company;

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\(^{20}\) See also annexe to this chapter

\(^{21}\) Incorporation by one sole shareholder (one-person private limited company) is possible provided that this is a natural person and a minimum of € 12,400.00 is paid up at incorporation. If the sole shareholder is also sole shareholder in another company or if and as long as the required minimum capital (€ 12,400.00) is not paid, he remains personally and jointly liable for the debts of the one-person company.
Transfer of shares:

- Transfer of shares subject to limitations required by law: transfer of shares should be approved at ordinary or special meeting of shareholders by at least 1/2 of the shareholders and at least 2/3 of the votes cast. The articles of the company may provide for even stricter rules. Unless otherwise provided in the company’s articles these limitations of transfer of shares do not apply to transfers between existing shareholders, between a shareholder and his or her spouse or certain ascendants or descendants. Also transfers to other categories may be exempted from these limitations.

Management:

- The management of the company can be entrusted to one or more paid or unpaid persons (“zaakvoerders”/”gérants”) for a limited or an unlimited duration. Managers can also be appointed in the deed of incorporation as “statutaire zaakvoerders”/gérants statutaires”. Unless provided otherwise they are then appointed for the duration of the company and may only be dismissed by unanimous decision of the general, meeting of shareholders.

IV. Other types of companies available in Belgium:

A foreign company may consider also the following structures, some with incomplete legal personality and some with full legal personality:

With incomplete legal personality:

4.1. A general partnership (“vennootschap onder firma” (“VOF”)/société en nom collectif” (“SNC”));

A general partnership is a partnership formed by 2 or more partners, which can be either natural persons or legal entities, in order to carry out commercial activities under a common name. Although it has legal personality to act as such before the courts, its partners are –without limitation- jointly and severally liable for the debts of the partnership.

A limited partnership is formed by 2 categories of partners: one or more general or managing partners and one or more so-called silent partners. Whilst the general or managing partners are jointly and severally liable without limitation the liability of the silent partners is limited to their contribution to the partnership.

4.3 A Partnership limited by shares (“commanditaire vennootschap op aandelen” (CommVA”/”société en commandite par actions” (“SCA”):

A partnership limited by shares is a partnership formed by one or more partners, who are jointly and severally liable) and one or more shareholders whose liability is limited to their contribution. The difference with the limited partnership is that the shareholders may freely transfer their shares.

4.4. A cooperative company with unlimited liability (“cooperatieve vennootschap met onbeperkte aansprakelijkheid” (CVOA)/ “société cooperative à responsabilité illimitée (“SCRI”);

A cooperative company is a formed by at least 3 shareholders who invest or contribute varying amounts. There are 2 forms of cooperative companies: one with limited and one with unlimited liability.

4.5. An economic interest grouping (“economisch samenwerkingsverband” (“ESV”)/”groupement d’intérêt économique” (“GIE”);

An economic interest grouping is set up by contract between 2 or more parties (natural persons or legal persons) for a definite or indefinite period. The aim may be to promote the economic activities of its members or to increase the profits generated by their activities. The economic interest grouping may not have as a purpose the making of profits for itself. It does not have legal personality and its members are jointly and severally liable for the debts of the grouping.

4.6. A European Economic Interest Grouping “Europees Economisch Samenwerkingsverband” (“ESV”)/Groupement Européen d’Intérêt Economique (“GEIE”);\(^\text{22}\)

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\(^{22}\) Regulation 2137/85 of 25 July 1985
The same principles which apply to the economic interest grouping apply to the European economic interest grouping, which consist of members established in at least 2 of the states of the EU.

With Legal personality:

4.7. A cooperative company with limited liability (“coöperatieve vennootschap met beperkte aansprakelijkheid” (“CVBA”)/”société cooperative à responsabilité limitée” (“SCRL”);

4.8. A European company (“europese vennootschap” (“EV”)/ "société européenne” (“SE”);

The European Company was introduced in Belgian legislation in 2004 in the basis of Council Regulation (EC) No 2157/2001 of 8 October 2001.23

V. Relevant tax aspects linked to company law

**Corporate tax**

**Capital contribution tax:**

5.1. The 0.5% registration duty on capital contributions has been abolished (as from 1 January 2006).

**Corporate Income Tax:**

5.2. Taxable income of a resident company is comprised of annual worldwide income less allowable deductions. The corporate tax rates in Belgium are:

- Taxable income less than EUR 25,000 : 24.25%
- Taxable income from EUR 25,000 to EUR 90,000 : 31%
- Taxable income from EUR 90,000 to EUR 322,500: 34.50%
- Taxable income EUR 322,500 and up: 33%

In addition to the above rates, a 3% surtax is imposed on the corporate income tax. The surtax is a temporary measure. Thus, the corporate rate for taxable income from EUR 322,500 and up is 33.99% (33 + 3% of 33).

Capital losses are in principle deductible. As an exception, capital losses on shares are not tax deductible. Capital gains are in principle taxable upon their

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realization. As an exception, capital gains on shares are in principle free of taxes.

Withholding Taxes:

5.3. Dividends distributed by a Belgian company are in principle subject to a Belgian domestic withholding tax of 25%. Under the EC Parent-Subsidiary Directive no tax is withheld on dividends paid to a company established in Belgium or another EU member state which holds at least for an uninterrupted period of one year 10% of the shares.

No tax is withheld on the remittance of branch profits.

Interest payments are in principle subject to a Belgian domestic withholding tax of 15%.

‘Royalties’ understood as incomes derived from letting, use or concession of movable goods is in principle subject to a 15% withholding tax unless an exemption applies.

These withholding taxes are often reduced under the double taxation treaties which Belgium has concluded as part of a broad tax treaty network.

Notional Interest deduction:

5.4. The so-called «notional interest deduction» is a new, innovative and powerful measure in international tax law enabling all companies subject to Belgian corporate tax to deduct from their taxable income a fictitious interest calculated on the basis of their shareholder’s equity (net assets). The amount that can be deducted from the taxable base equals the fictitious interest cost on the adjusted equity capital.

The notional interest rate for tax year 2010 (i.e. accounting year ending on 31 December 2009 or later in 2010) is 4.473%. It has even been increased to 4.973% for SMEs. This rate will be revised annually. It will be equal to the annual average of the monthly published interest rates for 10-year linear Belgian government bonds («OLOs») over the year taken two years before the fiscal year concerned (e.g. the average of the interest rates of 2008 for fiscal year 2010).

The notional interest deduction combines with the extensive treaty network concluded by Belgium, the tax regime for expatriates, the access to European Directives and the Belgian ruling practice. This large set of measures makes Belgium an attractive location for capital-intensive companies, equity funded, headquarters and treasury centres.
Special expatriate tax regime:

5.5. Executives posted in Belgium may qualify for a special expatriate tax regime.