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***Legal framework for doing business in Belgium
Setting up and tax incentives***

**EALG
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1. Setting up and the Legal Corporate Structure in Belgium

1.1. General principle

No prior government authorisation required and no restriction on the transfer of capital into or out of Belgium.

1.2. Main options

In establishing a business in Belgium you can choose between using a company, a partnership or a sole trader status (“self-employed”).

Despite the great attraction of sole trader status, particularly due to its simplicity, many disadvantages are associated with this legal form of business. The entrepreneur who has chosen this scheme has unlimited liability for any debts. Another disadvantage resides in the fact that the individual entrepreneur is subject to personal income tax. On the other hand an individual business requires less capital since it is based for the most part on the work of the entrepreneur, whereas company status requires a major investment that will only be profitable later. In addition, for an individual business, administrative formalities and costs are limited and the accounts are generally simplified.

Most businesses will be set up as companies. Belgian company law recognises the commercial company in various forms. The most common forms commercial companies can take are: the Company limited by shares (S.A./N.V.), the Private Limited Liability Company (S.P.R.L./B.V.B.A.), the Co-operative company, the European Economic Interest Grouping.

Companies aiming at incorporating in Belgium may decide between operating through a subsidiary (incorporated under Belgian law) or a branch (incorporated under the laws of a foreign country).

The basic characteristics for establishing a corporation as a subsidiary or as a branch are covered hereafter:

1.3. Formation of a subsidiary

A subsidiary in the form of a company organised under Belgian law is endowed with legal personality and hence forms a legal entity distinct from its parent.

A subsidiary which takes the form of a company must be incorporated by notarial deed. A preliminary financial plan for a 2-year period must also be supplied.

The articles of association and all documents regarding appointment of the directors and auditors must be filed with the Court of Commerce and must be published in the Belgian Official Gazette within fifteen days. The language of the documents is either French or Dutch depending on the region in which the business will be located.

The components of the setting up costs are:

- the notary fees which are calculated as a decreasing percentage on the subscribed capital
- the registration tax of 0.5% on the subscribed capital
- the costs of publication in the Official Gazette.

The subsidiary must be registered with the local Trade Register and must also apply for a VAT number (the latter does not entail any additional costs).

1.3.1. Company Limited by Shares

In Belgium a limited company by shares is best suited for larger enterprises. The reason is that this type of company can issue bearer shares that are freely transferable. The minimum capital requirements and the minimum amount paid-up depend on the form the subsidiary will take. In the case of a Company Limited by Shares, the minimum share capital of 61,500 EUR must be fully subscribed and fully paid up. The share capital can also be subscribed in kind, but this requires a valuation report from an authorised auditor.

The Company Limited by Shares requires a minimum of two shareholders, who may be individuals or legal entities (Belgian or foreign). All the powers of the daily management of the company are in the hands of the Board of Directors constituted by the total number of directors. This body appoints one or several statutory auditors, who must review annually the financial position of the company.

The General Meeting shall appoint at least three directors. These directors do not have to be shareholders. The day-to-day management of the company's affairs may be delegated by the Board to one or more directors or even to one or more persons who are not on the Board, such as managers, supervisors or other agents. The term of office they are granted by the General Meeting may not exceed six years. The directors may be re-elected by the General Meeting but also dismissed by it at anytime and without justification.

1.3.2. Private Limited Liability Company

A private limited liability company is best suited for small and privately held companies. Belgian corporate law provides relatively simple and flexible operating rules. The Private Limited Liability Company is formed by one or more persons who are responsible only for the assets they brought into the business. The shares are also transferable but under certain specific conditions. The minimum capital amounts to 18,600 EUR and must be fully subscribed and paid up to the extent of a third (6,200 EUR). This form of company admits only one director.

1.3.3. Cooperative Company

The cooperative company is a very flexible company form. There are two types of cooperative companies: one with unlimited liability (cvo/ha/scri) and one with limited liability (cv/sc). The Cooperative Company is set up by means of authentic deed (involvement of a notary). At least three partners are needed for the constitution.

The capital of the Cooperative Company has two parts:

- a fixed amount which must represent at least 18.550 EUR of issued capital and which must be paid in an amount of 6.200 EUR;
- a variable portion, which varies with the entry and exit of partners, capital increases or the taking back of shares.

One quarter of all capital contributions must be paid in. The Cooperative Company is managed by one or more business managers.

1.3.4. Directors Company Requirements

There are no residence or nationality requirements for company directors but a minimum level of management proficiency will be required.

If a non-citizen of the European Union wants to stay in Belgium for more than three months, or to practise a trade, a profession or an occupation (as a director for instance) in Belgium, he is normally required to file for the professional card or the work permit, in addition in each case to the temporary resident's visa.

1.4. Formation of a branch

Contrary to a subsidiary, a branch, although it may constitute an economic entity separate from the head office of the foreign company, is not endowed with a distinct legal personality, but is part of a legal entity of that foreign company.

As for the formalities of incorporation, the foreign-registered company must file, with the Court of Commerce, a copy of its articles of association, together with its resolution to set up a Belgian branch and the name of the manager or chief executive of the branch and the powers to be vested in him/her as legal representative of the company in Belgium.

The main cost will be:

- the fee of the official translation into either French or Dutch of the articles of incorporation and the by-laws of the parent company
- the fee of publication in the Belgian Official Gazette.

The financial statements of the foreign company (annual accounts and consolidated annual accounts) have to be translated and filed with the National Bank of Belgium.

The branch must be registered with the local Trade Register and must also apply for a VAT number (the latter does not entail any additional costs).

There is no (minimum) capital required but the parent company has to invest the necessary amount of money in order to carry out the business in Belgium. However, for branches having more than 100 employees, a qualified statutory auditor will also have to be appointed.

Branches are governed by the same regulations as Belgian companies for management and operations in Belgium.

1.5. Subsidiary versus branch

Since the subsidiary is a separate legal entity, its liability is limited to its own assets. The shareholders will therefore not be personally affected by the liabilities of the subsidiary beyond the amount of subscribed capital.

As a branch has no legal personality, obligations incurred through such branch can be enforced on the assets of the foreign company, even if they are located abroad. In order to avoid this, the foreign company may consider establishing a wholly owned subsidiary at home, which will then set up the branch.

1.5.1. Management

A subsidiary, under the form of a Company Limited by Shares, is managed by a board of directors comprising at least two directors. No conditions of nationality or residence of these directors are imposed. Powers may be delegated by the board of directors in order to charge one or more persons with daily management of the company.

A subsidiary under the form of a Private Limited Liability Company admits only one director.

A branch must appoint a legal representative. This legal representative does not need to be a Belgian national, nor a Belgian resident. The structure and the extent of the powers the representative is granted can be freely organized within the branch.

1.5.2. Publication of annual accounts

A subsidiary must keep accounting records in compliance with the Belgian legal provisions and must proceed to the annual publication of its annual accounts.

Branches also have the obligation to keep accounting records in accordance with the Belgian accounting rules but are not required to publish their own annual accounts. Only the accounts of foreign company of which the branch is part of need to be published in one of the Belgian official languages. The parent company's accounts must be audited and certified according to its own national regime.

1.5.3. Taxation

Whereas registration tax is payable at the rate of 0.5% on the subscribed capital of any subsidiary, no such tax is due upon the establishment of a branch in Belgium. The amount of "working capital" that is put at the disposal of the branch by its head office is indeed not subject to such tax.

On the other hand, whereas interests and royalties paid by a subsidiary to its parent are, in principle, deductible for tax purposes (provided at arm's length), this is not the case if such payments are made by a branch to its head office.

1.6. Alternative possibilities: The Economic Interest Grouping

These are undertakings with incomplete legal personality that offer companies the possibility of founding a legally independent entity for working together, in order to facilitate, rationalise and develop their economic activities. The collaboration relationship must take account of the economic activity of the member companies and should act as support (for example joint accounting or canvassing). This type of association cannot be used to found a new business or regroup all activities of the members.

The main difference between these legal forms is that an EEIG groups entities from different Member States, which, in principle, is not the case for the EIG.

The EEIG and the EIG are fiscally transparent: as concerns taxation of income, they are considered not to have legal personality, so that the results of these economic groupings are exclusively taxable to the members as profits or advantages.

This does not prevent the EEIG and the EIG from maintaining their legal personality to carry out their other tax obligations (withholding and paying the professional withholding tax, establishing pay slips ...). Foreign companies that are members of a Belgian resident EIG could be liable in Belgium to the non-resident corporate income tax if their activities in Belgium are regarded as permanent establishment. This form of company can be constituted by a private document.

1.7. Company registration process

The Belgian government is currently simplifying the company registration process. One of the important factors in this process has been the introduction of the single ID number for companies, which replaces a range of previous numbers used for VAT, company registration and social security. Progress towards a single number to cover all administrative matters began with the establishment of a Crossroads Bank for Companies, a central databank, in mid-2003. From January 1, 2005, all businesses in Belgium are required to use their unique company number when dealing with various government departments. In order to receive this unique identification number, the founder of the company can go to one of the "Business One-Stop-Shops".

The procedure to start up a business has been drastically reformed since 1 June 2006. It is now possible to start up a business in only 3 days. The notary can electronically exchange the data necessary to create a business through an electronic counter or 'e-depot'. This means that the notary will electronically sign the authentic act. The file is then sent to the different databases of the registry, the Crossroads Bank for Enterprises and the Belgian Official Gazette. The notary receives the client's company number in a matter of minutes.

From now on, the starter only needs to take three steps in three days:

1. **Bank:** The starter deposits the minimum capital.
2. **Notary:** The starter goes to the notary. The notary submits the authentic act electronically and receives the company number.
3. **Business one-stop shop:** the starter can go immediately to one of the business one-stop-shops and activates the unique company number.

2. Tax incentives for businesses in Belgium

Belgium has developed particularly advantageous tax regimes for specific business entities and foreign executives.

2.1. Advance decision in tax matters (ruling)

The Law of 24 December 2002 setting up an advance decision-making system in tax matters grants the possibility to all the taxpayers and potential investors who submit a request concerning any specific operation or project to obtain an advance decision on the taxation consequences of the operation or situation they have in mind.

An advance decision is a juridical act by which the FPS Finance determines how the tax laws will be applied to a specific situation or operation, previously to the consequences it may have at the tax level. In this way, the advance decision therefore grants the requesting party the right to legal security relating to the operations or situations presented to the FPS Finance in the context of its request as far as those operations are carried out or this situation is realized in accordance with the given description.

2.2. Notional interest deduction

All Belgian tax resident companies and Belgian branches of non-resident companies are allowed to claim tax-wise a notional interest deduction reflecting the economic cost of using capital, equal to the cost of long-term, risk-free financing.

The notional interest deduction will be equal to the 10 year OLO rate (to be fixed at year end but likely to be around 3.5 %) on the equity shown in the company's individual Belgian financial statement. Small and medium-sized companies are allowed to raise the interest reference rate by 0.5%. The tax benefit resulting from the notional interest deduction can be carried forward for seven years, if

there is insufficient tax capacity in the year of deduction. However, in order to benefit from the notional interest deduction, the amount of the granted notional interest deduction needs to be put and maintained in a blocked reserve account during the taxable period and for at least three years.

2.3. Foreign executives

Belgium has a special tax regime applicable to foreigners who are assigned to Belgium to work for a Belgian company that has an international character or is a part of an international group. The special tax regime offers significant benefits:

- Foreign executives with a temporary assignment will be, for Belgian tax purposes, qualify as non-residents. This means that the expatriate will only be taxable on the income related to the activities in Belgium.
- The employee is not taxable, within certain limitations, on the reimbursements of expenses incurred by him as a result of his temporary stay in Belgium. These costs are considered as expenses that are attributable to the employer, and consequently not taxable on behalf of the employee.

2.4. Informal capital ruling

An informal capital ruling is, in the first place, a 'ruling', i.e. a binding agreement with the tax authorities on the interpretation and tax consequences of a specific article in the Belgian tax law. The binding power of this agreement provides for **legal security for the future**.

The basic idea behind the ruling is that a Belgian company has had put at its disposal (free of charge) certain intangible assets (the 'informal capital'). These intangible assets take the form of know-how, brand recognition, customer base, etc.

Belgian accounting law does not permit accounting for this informal capital as an asset. Therefore, it can be said that the market value of the Belgian company is higher than is reflected in its statutory accounts. For tax purposes, however, the informal capital is considered as an asset of the company, eligible for depreciation.

Through an informal capital ruling, the Belgian company is allowed to take this economic reality into consideration by considering the informal capital as an asset for tax purposes, an asset that can be depreciated.

Since the informal capital can be depreciated for tax purposes but not for accounting purposes (because it cannot be accounted for at all), the tax profits will be substantially below the profits arising out of the statutory accounts of the company.

2.5. Lowest effective tax rate on capital

Belgium has the lowest effective tax rate on capital in the world, according to the 2006 Tax Competitiveness Report published by the C.D. Howe Institute in September 2006, a leading Canadian economic think tank (www.cdhowe.org). The survey, which looked at effective tax on capital in 81 countries, showed that Belgium has a tax rate of -4.4 percent. This low rate is mainly due to recent fiscal measures introducing a notional tax deduction for equity financing.

The information contained in this paper is given for general information only. This information does not constitute legal advice and you should not rely on any information contained in this paper without first taking professional advice. If you require specific legal advice please contact us.

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