Legal 500
Country Comparative Guides 2024

Belgium

Tax

Contributor

PwC Legal

Patrice Delacroix

Attorney PwC Legal | Partner | patrice.delacroix@pwc.com

Véronique De Brabanter

Attorney PwC Legal | Director | veronique.de.brabanter@pwc.com

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

For a full list of jurisdictional Q&As visit **legal500.com/guides**

Belgium: Tax

1. How often is tax law amended and what is the process?

Tax law is frequently modified with minor adjustments, but significant changes to tax legislation typically occur twice a year through what are known as program laws. These laws are generally published in June and December in the framework of the approval of the budget.

The legislative process varies depending on the body introducing a new measure. In the Belgian context, there is a federal parliament responsible for establishing national fiscal regulations. Furthermore, there exist regional parliaments, provinces, and municipalities, each endowed with their distinct competencies.

Belgium's democratic legislative process can in general be described as follows: a government draft is submitted in parliament and reviewed by the Council of State, discussions take place in a parliamentary commission where amendments can be proposed. After discussion in a plenary session in parliament the voting takes place. Once adopted and ratified and proclaimed by the King, the Act is published in the Official Gazette.

2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

Corporate entities are obliged to submit their annual corporate income tax returns, within compelling deadlines. Belgian entities that are part of a multinational group also need to comply with the transfer pricing documentation obligations. Individual taxpayers are likewise obliged to file their tax returns, with some exceptions where tax returns are pre-filled by tax authorities.

Every taxpayer must maintain accounting records and all pertinent documents essential for determining taxable income for a period of ten years following the taxable period. If requested by the tax authorities, taxpayers are required to submit, without physical relocation, all books and documents necessary for the determination of the amount of taxable income.

3. Who are the key tax authorities? How do they engage with taxpayers and how are tax issues resolved?

On a federal level, the Federal Public Service Finance (FPS Finance) is the key regulatory authority. Within the FPS Finance, there are several distinct tax administrations, each responsible for specific domains of the federal taxes (such as Corporate Income taxes, Personal Income taxes (federal part), VAT and Customs and Excise duties).

At the regional level, the key authorities are the Flemish, Brussels and Walloon Tax Authorities, each competent for regional tax matters (such as a.o. real estate taxes, inheritance taxes, registration duties,…). The regional tax authorities are acting independently from the Federal Public Service Finance (although some regional taxes are still levied by the federal authorities).

Local authorities (provinces and municipalities) also have autonomous taxation powers which they exercise under the administrative supervision of the regions.

As the tax authorities have investigation powers, revisions of the tax situation can be imposed. When the taxable basis is revised and/or if a tax increase is applied by the tax authorities, the taxpayer can appeal this decision through the administrative and, in a later stage, judicial procedure. Taxpayers can apply for an advance ruling with the Office for Advance Tax Rulings as regards the tax consequences of a transaction or a situation. The period to obtain a ruling decision may vary depending on the matter. On average it takes a minimum of 3 to 6 months. Multinational companies can request bilateral/multilateral APAs for cross-border transactions (transfer pricing or allocation of profits to permanent establishments).

4. Are tax disputes heard by a court, tribunal or body independent of the tax authority? How long do such proceedings generally take?

To resolve a tax dispute, the taxpayer typically initiates the process with the administrative phase. This entails attempting to reach a resolution with the tax authorities by lodging an appeal. During the administrative phase of the tax appeal regarding federal taxes, taxpayers have the option to enlist the services of the Tax Mediation Office.

This is an entity of the Federal Tax Authorities that operates autonomously and acts as an impartial mediator, facilitating communication and resolution between the tax authorities and the taxpayer.

If the appeal proves unsuccessful, the taxpayer can then initiate proceedings in the court of first instance. Each jurisdiction has a specialized chamber specifically designated for handling tax cases.

Taxpayers have one year to file a tax claim (i.e. an administrative appeal) against a disputed tax assessment for federal income taxes. If six months have passed since the tax claim was initiated without a decision, the taxpayer can start a court proceeding. A negative administrative decision can be challenged by filing a petition before the Court of First Instance within a three-month window. The duration of both the administrative and judicial phases of the procedure varies depending on which authority and court holds jurisdiction to make a decision.

The procedural rules are different for indirect taxes and for regional and local taxes.

5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

The deadlines for the payment of taxes in Belgium can vary depending on the type of tax and the specific circumstances of the taxpayer. Belgian companies are encouraged to make quarterly prepayments on their corporate income tax. If after the corporate income tax is filed and processed, a supplement is due, the amount thereof must be paid within two months following the sending of the assessment notice. If the company is registered for VAT, it must file regular VAT returns and simultaneously pay the VAT due, typically on a monthly or quarterly basis, depending on the volume of its business activities.

For disputed amounts of tax, special rules apply. If a tax claim is filed, no enforcement measures can be taken by the tax authorities to oblige the taxpayer to pay the disputed amount of the tax, until the dispute has been resolved. However, unpaid tax assessments will result in late payment interests that are due and conservatory measures (e.g. withholding of a VAT credit) are still possible. The rate for late payment interests this year is 4 %.

If the taxpayer decides to pay the disputed tax and the tax is annulled in a later stage, the taxpayer can claim moratorium interests at a rate of 2 % a year.

6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

Tax authorities in Belgium are indeed subject to a duty of confidentiality when it comes to taxpayer data. Belgian tax authorities are bound by professional secrecy, which is also enshrined in the law, based on which they are prohibited from disclosing taxpayer information to third parties without proper authorization or legal basis.

7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

Belgium is a signatory to the Common Reporting Standard (CRS) and has implemented CRS into its legislation by Act of 16 December 2015 in view of obliging Belgian financial institutions to yearly file the required information through a dedicated electronic platform.

Regarding the maintenance of a public register of beneficial ownership, Belgium has implemented the EU's fourth and fifth Anti-Money Laundering Directive (EU Directive 2015/849 and EU Directive 2018/843), which requires the establishment of registers of beneficial ownership for legal entities.

Companies and other entities are required to collect and hold information on their beneficial owners. The register should contain at least their name, date of birth, nationality, and country of residence, as well as the nature and extent of the beneficial interest held. In addition to the initial registration of the UBOs, every change must be updated within the month and, moreover, the accuracy of the information must be confirmed annually.

The UBO register used to be accessible to the public, but can now, following a ruling of the European Court of Justice, only be consulted by those who demonstrate a legitimate interest. Under certain conditions, the tax authorities can have access to the UBO register.

8. What are the tests for determining residence of business entities (including transparent entities)?

A company is considered a resident of Belgium for corporate law purposes if it has its registered seat in Belgium. This is different for tax purposes (cfr. 18).

9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?

Belgium implemented BEPS 13 into domestic law providing for the mandatory filing of transfer pricing documentation in line with the principle of the three tiered approach (master file, local file and country-by-country report) for Belgian entities of Multinational Groups meeting the thresholds determined by the law. A penalty regime is provided for non-compliance with the formalistic documentation requirements. Recently enhanced reporting requirements apply for financial years starting on or after 1 January 2025.

From 2024, both multinational corporations and independent companies operating within the EU will need to enhance their tax transparency efforts. This will involve the preparation, submission, and public disclosure of a country-by-country report (CbCR) that includes specific tax and financial details. This CbCR will be public and is applicable to financial years starting on or after 22 June 2024.

Belgium has a special transfer pricing investigation unit with a mission to (i) build up and share transfer pricing expertise and (ii) carry out in-depth transfer pricing audits of multinationals present in Belgium through a subsidiary or permanent establishment. The number of transfer pricing audits being initiated in Belgium has increased significantly. In general, companies are selected for transfer pricing audits based on data mining techniques.

The Belgian tax authorities are regularly participating in multilateral audits with tax authorities of other European member states.

A specific reporting obligation also exists for direct or indirect payments, equal to or exceeding EUR 100,000 during the tax year, made by companies subject to Belgian CIT or Belgian non-resident CIT to recipients established in tax havens. The reporting must be made on a special form to be attached to the (non-resident) CIT return.

We observed a trend of increased focus of the tax authorities on passive income flows (dividend, interest and royalty), beneficial ownership issues and alleged tax abuse through the involvement of intermediary entities.

10. Is there a controlled foreign corporation (CFC) regime or equivalent?

The CFC rules apply when a Belgian company own (together or not with associated companies) more than 50% of the capital, voting rights, or profit of a foreign entity, and the foreign entity either is not subject to tax under the applicable rules of its residence state or is subject to income tax that is less than half of the CIT of the CFC computed based on Belgian rules. A foreign entity established in a jurisdiction that, at the end of the taxable period, is included in the EU list of non-cooperative jurisdictions also qualifies as a CFC without the above conditions having to be fulfilled. The taxpayer can nevertheless prove that sufficient substance is available to avoid the application of the CFC regime.

Belgium opted to include the first option of the ATAD (model A), which focuses on the taxation of passive income subject to low taxation abroad in proportion to the direct investment of the Belgian entity in the Controlled Foreign Company. There are certain safe harbor rules.

The Belgian corporate taxpayers will have to disclose the existence of the CFC and an additional tax could arise on the undistributed passive income of the foreign participation.

11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?

The arm's-length principle is formally codified in the Belgian Income Tax Code (BITC). A Belgian circular of 25 February 2020 provides an overview of the OECD transfer pricing guidelines for multinational enterprises and tax administrations.

In addition, the tax authorities can make use of other, more general, provisions in the BITC to assess the arm's-length nature of transfer prices (e.g. the general rules on the deductibility of business expenses). The BITC contains provisions that tackle artificial inbound or outbound profit shifting. These are the so-called provisions on abnormal or gratuitous benefits.

Belgian tax law provides for a general thin capitalisation rule (5:1 debt-equity ratio) according to which interest payments or attributions in excess of a 5:1 debt-equity ratio are not tax deductible.

The thin capitalisation rule existed until and including tax year 2019. As of tax year 2020 (financial years ending 31 December 2019 or later), the EBITDA-based rule applies.

However, the thin capitalisation rule remains applicable in case of (i) grandfathered loans (i.e. loans granted before 17 June 2016, in case no 'fundamental' modifications have been made) and (ii) interest paid to a beneficiary located in a tax haven.

The EBITDA-based rule is in line with the EU Anti-Tax Avoidance Directive (ATAD) I requirements. Exceeding borrowing costs are only tax deductible up to the highest of (i) 30% of the taxpayer's fiscal EBITDA or (ii) EUR 3 million. The exceeding borrowing costs that could not be deducted in the current taxable period can be carried forward for an unlimited time. Furthermore, upon certain conditions, taxpayers belonging to the same group also have the possibility to transfer unused EBITDA capacity to other group companies.

Advance pricing agreements (APAs) can be concluded (unilaterally, bilaterally, and multilaterally) via which the taxpayer can obtain upfront certainty.

12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?

Yes, the Belgian tax law foresees a general anti-avoidance rule (in income tax matters as well as in other tax matters, e.g. inheritance taxes and registration duties). Under the general anti-abuse provision, legal acts or a set of legal acts are not enforceable in the case of tax abuse. Tax abuse occurs when the taxpayer performs an act in which he places himself in a situation contrary to the objective of a legal provision or claims a tax advantage which contradicts the provision's objectives.

If the tax authorities provide proof that the legal act or the whole series of legal acts has been chosen with a view to obtaining a tax advantage, it is up to the taxpayer to prove that the choice for his legal act or the set of legal acts is justified by motives other than avoiding income taxes. If the taxpayer does not provide proof to the contrary, the taxable basis and the tax calculation will be restored in such a way that the transaction is subject to taxation in accordance with the purpose of the law as if the abuse had not occurred.

13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

At the moment there is no Belgian DST (digital services tax). The Belgian federal government favors a multilateral approach and therefore prefers a digital services tax at the multilateral level. Awaiting the formation of a new government, there is no clarity whether Belgium will apply either the OECD Pillar 1 approach or will implement an EU digital tax, its own digital services tax.

14. Have any of the OECD BEPS recommendations, including the OECD's recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?

Of the 15 BEPS actions in total, 12 BEPS recommended changes have already been implemented into Belgian tax law: Action 2 (Hybrid mismatch arrangements); Action 3 (Controlled Foreign Companies regimes); Action 4 (Financial payments); Action 5 (Harmful tax practices); Action 6 (Tax treaty abuse); Actions 8-10 (transfer pricing); Action 12 (Mandatory disclosure of aggressive tax planning); Action 13 (Transfer pricing documentation); Action 14 (Dispute resolution mechanism); and Action 15 (MLI).

Linked to BEPS Action 12, the DAC 7 (at EU level) is also worth mentioning as this directive was recently implemented in Belgian tax law, both at federal and regional level.

On 24 December 2023, the Belgian government approved the law introducing a global minimum tax for multinational companies and large domestic groups. This is the Belgian transposition of the Council Directive (EU) 2022/2523 ensuring a global minimum level of taxation for MNE and large domestic groups in the European Union.

With the entry into force of the law on 31 December 2023, Belgium implemented a minimum tax rate of 15% by introducing three levy measures: the qualified domestic minimum top-up tax (QDMTT), the qualified income inclusion rule (IIR) and the qualified undertaxed profits rule (UTPR). Companies in scope of Pillar 2 need to consider advance tax payments for Pillar 2.

Multinational enterprise groups and large-scale national groups subject to the minimum tax introduced by the law of 19 December 2023 must register with the Crossroads Bank for Enterprises (CBE). To do so, these groups need to notify FPS Finance using a form available on MyMinfin. This notification must be completed within 30 days after the start of the tax year for which the group falls under the scope of the new law.

15. How has the OECD BEPS program impacted tax policies?

Belgium has been an advocate of the BEPS action plan from the start resulting in a rather smooth transposition of almost all action points without substantial deviations from the EU-Directives on those matters. The BEPS action plan is in line with the Belgian tax policies to cooperate constructively in tackling international tax avoidance through base erosion and profit shifting.

At the end of 2023, the directive regarding Pillar 2 was transposed into Belgian legislation.

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

Yes, Belgium follows the OECD model and has implemented the following taxation principles (high level and non-exhaustive):

Individual income taxation:

Residents of Belgium are taxable on their worldwide income, while non-residents are only taxable on Belgian-source income. Certain exemptions may apply for foreign income.

Types of income include a.o. employment income, pension income, income from operating a business as a natural person, movable (investment/savings) income (such as dividends, interest and/or royalties), capital gains, certain qualifying diverse income and income from immovable property.

As a general rule concerning income derived from employment, pensions and operating an independent business, taxation is charged on a sliding scale to successive portions of net taxable income. For income year 2024, the federal tax rates range between 25% and 50%, with an exemption under a certain threshold.

For residents of Belgium, communal taxes are levied at rates varying from 0% to 9% of the income tax due. For non-residents, a flat surcharge of 7% is due. In some cases, communal taxes may also be levied on exempted foreign-source income.

In general, movable income, investment (including royalties) and/or savings income, is taxed at a separate rate for which the general rate is considered at 30% (withholding tax).

Capital gains on shares are in principle tax exempt if realized within the normal management of private assets.

For diverse income the rates usually vary between 16,5% and 33% depending on the specific type of income.

Local property tax is assessed on ‘cadastral income’, i.e. the deemed rental value attributed to the property by the authorities. If the property is rented to a physical person which uses the property for professional purposes, a taxation will take place in relation to the rental income.

Resident taxpayers who own real estate abroad must report their foreign property in their Belgian tax return.

Corporate tax:

In general, the tax base for CIT purposes is determined on an accrual basis and consists of worldwide income less allowed deductions. The rules are equally applicable to companies and PEs. It is assumed that all income received by a company is, in principle, business income.

CIT is levied at a rate of 25%. This rate applies to both Belgian companies (subject to Belgian CIT) and Belgian permanent establishments (PEs) of foreign companies (subject to Belgian non-resident CIT).

Small and medium-sized enterprises (SMEs) (subject to conditions) are able to benefit from a reduced rate of 20% on the first bracket of EUR 100,000 profit.

A minimum tax base applies for companies with a taxable profit that exceeds EUR 1 million via the limitation of certain deductions.

Capital gains on qualifying shares realized when meeting all conditions are fully exempt, while non-qualifying shares are subject to the 25% rate.

VAT:

The following transactions are subject to VAT in Belgium if they are considered to take place in Belgium:

- The supply of goods and services affected for consideration by a taxable person acting as such.
- The acquisition of services for consideration

from outside Belgium between taxable persons.

- The importation of goods.
- Intra-Community acquisition of goods for consideration by a taxable person acting as such or by a non-taxable legal person (including the transfer of assets).
- The self-supply by a taxable person.

The standard VAT rate is 21%. This rate applies to all goods and services not qualifying for one of the reduced VAT rates (12% and 6%).

Registration duty:

Purchases and transfers of real estate located in Belgium, including buildings (except new buildings, which are subject to VAT), are subject to a registration duty of in principle 12/12,5% depending on the region where the real estate is located. Lower rates may be applicable.

Registration duties are regional taxes and may vary in the 3 regions (Brussels, Flemish, Walloon region).

17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

In general, the tax base for CIT purposes is determined on an accrual basis and consists of worldwide income less allowed deductions. The rules are equally applicable to companies and PEs. It is assumed that all income received by a company is, in principle, business income. The income tax base is based on the Belgian Generally Accepted Accounting Principles (GAAP) financial statements of the company.

18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?

For a company to be subject to corporate income tax, three cumulative conditions need to be fulfilled:

– the company needs to have legal personality;

– the company is engaged in profit-making activities; and

– the company has its legal seat, main establishment or place of effective management in Belgium.

Hence, all companies, associations, cooperatives, limited partnerships on shares, organizations or establishments which have legal personality and which are engaged in profit-making activities or in the operation of a business in Belgium are subject to corporate income tax. Certain entities, however, may qualify as an entity with legal personality for legal purposes but not for tax purposes.

Limited partnerships, economic interest groupings (EIGs) and European economic interest groupings (EEIGs) are not recognized as separate taxpayers and, generally, their profits are taxed in the hands of the partners (tax transparency).

19. Is liability to business taxation based on tax residence or registration? If so, what are the tests?

A company is a resident of Belgium for tax purposes if it has its principal place of business or its seat of management in Belgium. The seat of management has been defined by Belgian case law as the place from where directing impulsions emanate or the place where the company's effective management and central administration abide, meaning the place where the corporate decision-making process actually takes place.

Although in company law the 'registered seat' theory has become the new general rule since the reform of Belgian company law in 2019, from a tax point of view, the 'real seat' theory remains applicable. Therefore, new definitions of 'companies', 'resident companies' (combined with a rebuttable presumption to avoid situations of double non-residence), and 'foreign companies' have been introduced in the Belgian Income Tax Code.

20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?

No favorable taxation regimes exist in relation to particular areas.

Deviating taxation regimes may exist in relation to certain types of activities but are in general considered to be limited (e.g. diamond sector, shipping sector, …).

Investment and/or pension funds with legal personality could be taxable in the same manner as they are subject to corporate income tax, but their taxable base only includes exceptional or gratuitous benefits received and costs and expenditure are not deductible as professional costs (excluding capital losses and impairments on shares). Consequently, dividends, interest, capital gains on real estate assets or rental income received by these funds are not taxed.

Investment and/or pension funds without legal personality are in principle tax transparent and no separate taxed entities. Therefore, Income derived by these investment/pension funds is, with a few exceptions, subject to withholding tax to be collected by the Belgian issuer or its paying agent, or, for foreign-source income, by the management company or the first Belgian financial intermediary which receives such income on behalf of the fund. Income paid to the investors by the investment funds is exempt from withholding tax as the withholding tax has already been levied on payment of the income to the fund itself.

21. Are there any special tax regimes for intellectual property, such as patent box?

Investment deductions

The investment deduction is a deduction from the tax base in addition to the normal tax depreciation on, amongst others, qualifying patents, environmentally friendly R&D investments, and energy-saving investments.

A company can benefit from a one-shot investment deduction of 15.5% (for tax year 2025, i.e. accounting years ending between 31 December 2024 and 30 December 2025 [both dates inclusive] for investments made up to 31 December 2024- see below on the entry into force of the new regime) of the acquisition value of qualifying investments. With respect to environmentally friendly R&D investments, a company can also opt for a spread investment deduction of 22.5% (for tax year 2025) of the depreciation on qualifying environmentally friendly R&D investments.

If certain conditions are met, SMEs can opt to apply an ordinary one-time investment deduction at a rate of 8% for investments made as of 1 January 2024.

Special rates exist in the framework of specific investment deduction regimes, such as for:

- ships, and
- carbon-free trucks and the installation of fuel infrastructure for blue, green, or turquoise hydrogen and electric charging infrastructure for such trucks.

If there are insufficient or no taxable profits, the investment deduction can be carried forward, but certain restrictions apply as to the maximum amount of investment deduction carried forward that is tax deductible in a given year. Under certain conditions, the investment deduction carried forward can be lost after a change of ownership (see Net operating losses in the Deductions section).

Note that the investment deduction for patents and R&D cannot be combined with the tax credit for patents and R&D.

The Belgian investment deduction regime has recently undergone a revision by the Law of 12 May 2024. As the new regime is only applicable for investments made as of 1 January 2025, the current regime is still in force until the end of 2024.

For the investments that will be made during the taxable period linked to tax year 2025 until 31 December 2024 (former regime), a company can benefit from a one-off investment deduction of 15,5% for patents, environmentally friendly investments for research and development, energy-saving investments and smoke extraction or ventilation systems in catering establishments. Under the former regime still, taxpayers may opt to spread a 22,5% investment deduction over the amortization period of fixed assets that promote research and development of new, environmentally friendly products and technologies.

Special rates exist in the framework of specific investment deduction regimes, such as for:

- ships, and
- carbon-free trucks and the installation of fuel infrastructure for blue, green, or turquoise hydrogen and electric charging infrastructure for such trucks.

If there are insufficient or no taxable profits, the investment deduction can be carried forward, but certain restrictions apply as to the maximum amount of investment deduction carried forward that is tax deductible in a given year. Under certain conditions, the investment deduction carried forward can be lost after a change of ownership (see Net operating losses in the Deductions section).

Note that the investment deduction for patents and R&D cannot be combined with the tax credit for patents and R&D.

The new regime is organised around three "tracks":

- The general track: ordinary investment deduction (10% or 20% (qualifying digital investments, Royal Decree still to be published)). This is only applicable to

individuals and SMEs.
- The targeted track: an increased “thematic” investment deduction (replacing the specific categories of qualifying investments) (40% (SME)or 30% (non-SME)). A list of eligible investments for this investment deduction will be published by Royal Decree (and will be reviewed / updated periodically). The increased thematic deduction will only be applicable to fixed assets for which no regional aid is requested (exceptions to be determined by the King).
- The technology track: the so-called “technology” deduction applies in relation to qualifying investments in patents and fixed assets which are used to support research and development of new products and future-oriented technologies that have no impact on the environment or that aim to minimise the negative impact on the environment of existing products and technologies (13,5% (one-off) or 20,5% (spread, not applicable to patents)). Taxpayers could opt to apply a tax credit for this category of investments.

The law provides for fixed investment deduction rates and will no longer be subject to the yearly indexation mechanism.

A taxpayer can only choose one of the above-mentioned types of investment deduction per fixed asset.

The general conditions to benefit from the investment deduction remain the same.

Patents and R&D tax credit

As an alternative for the above investment deduction for patents and R&D, a company may opt for a tax credit for which the advantage corresponds to the advantage of the investment deduction (i.e. 15,5% one-time and 22,5% for a spread investment deduction for tax year 2025 for investments made up to 31 December 2024 – see above on the entry into force of the new regime), multiplied by the normal CIT rate of 25%. The investment deduction implies a deduction of the taxable basis, while the tax credit is a reduction of the tax due. A key advantage of the tax credit for patents and R&D is that it is refundable if it has not been deducted for four subsequent tax years.

As an assessment year 2025, taxpayers can choose either to fully credit the tax credit for research and development against corporate income tax or to carry forward it according to the rules specified in the law.

Reduced wage withholding tax for qualifying researchers

A partial (maximum 80%) wage withholding tax exemption for research and development (R&D) is available in Belgium. This exemption can be applied by companies if the following (cumulative) conditions are met: the applicant must execute R&D activities, the R&D projects must be notified with Belspo (the Federal Public Planning Service Science Policy, one of the main actors of scientific research in Belgium) prior to starting their execution and the employees need to be in the possession of a qualifying degree (PhD, master’s or bachelor’s degree in (applied) sciences, engineering…). If the R&D activities are not notified in the Belspo portal prior to the application of the exemption by the applicant, a penalty of nullity of the applied exemption for the full duration of the particular R&D activities will be imposed.

Since mid-2023, the yearly notification with Belspo has been revised towards one notification for the duration of the R&D activities. This should however be updated annually. Furthermore, it is now also mandatory for applicants of the measure to prove they have instored fitting internal processes regarding the application of the exemption.

One should note that, contrary to the past, the benefit obtained from the application of the partial wage withholding tax exemption can not be applied in combination with the R&D tax credit for the same expenses.

Content wise, a project or program can be considered as R&D if it falls within the scope of the definition of scientific research as foreseen by the Belgian legislator.

Innovation income deduction (IID)

The IID is based on Action Point 5 of the OECD BEPS Action Plan (applying the so-called ‘modified’ nexus approach) and replaces the (previous) Belgian patent income deduction (PID) regime, which was grandfathered for five years (until 30 June 2021).

The qualifying patent/innovation income is calculated on a net basis and depends on the level of qualifying activities (the so-called modified nexus ratio). The percentage of this deduction is raised from 80% under the (old) PID regime to 85% under the IID regime, resulting in an effective tax rate of 3.75% over the lifetime of the intellectual property (IP).

The IID can apply to income derived from certain intellectual property (such as patents and qualifying software) of which the company or branch has the full ownership, co-ownership, usufruct, or license of or right to use.

Under the IID regime, the benefit is available as of the date the patent is requested (and provided that the patent is actually granted afterwards).

Without making any restrictions to SMEs, the following income is considered as derived from the above qualifying IP in so far as the remuneration is included in the Belgian taxable result of the Belgian company or branch concerned:

- License fees.
- IP income embedded in the sales price of own manufactured products for which a third party would be willing to pay a license (so-called 'embedded' royalties).
- IP income derived from process innovation.
- Remunerations on the basis of a court/arbitral decision, an amicable settlement, or an insurance settlement.

Furthermore, the proceeds from a transfer of qualifying IP are also in the scope of the deduction, subject to a reinvestment condition to be met within five years.

22. Is fiscal consolidation permitted? Are groups of companies recognised for tax purposes and, if so, are there any jurisdictional limitations on what can constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?

Belgium applies the 'group contribution' regime, which is a kind of a tax consolidation (light) mechanism with respect to corporate tax. Under this group contribution regime,, Belgian companies (and Belgian PEs of foreign companies) may compensate taxable profits with current year tax losses if certain conditions are fulfilled, such as, amongst others:

- A 90% direct shareholding between the group companies (or via a common parent company) is required, limiting the scope to the parent, subsidiary, and sister companies and their Belgian PEs.
- The measure is limited to group companies that have been affiliated for at least the last five successive financial years.
- Some companies, such as investment companies and regulated real estate companies, are excluded.

The group companies must compensate each other for the tax burden of the group contribution; because of which, the tax consolidation is financially neutral on a group level. Transferred taxable profits can only be offset against current-year tax losses and not against carried forward tax losses that have been generated in the past. The scope of the tax consolidation regime is limited to certain qualifying companies and subject to various conditions. To benefit from the group contribution regime, the group companies concerned have to conclude a so-called 'group contribution agreement' that meets several conditions.

23. Are there any withholding taxes?

Yes. Domestic corporations and PE's of foreign corporations paying dividends, interest, royalties, service fees, and/or certain rentals are required to withhold tax. In principle a 30% withholding tax is levied on the income from movable property and capital. Some WHT reductions/exemptions are foreseen under Belgian domestic tax law. With respect to payments made to non-resident corporations or individuals, WHT exemptions and/or reductions can also be found in the DTTs concluded by Belgium.

Belgium also foresees in the specific form of a 'wage' withholding tax to which wages, pensions, interests or allowances paid to employees and directors (resident or non-resident) are subject. Under strict conditions however, the law foresees some exceptions (e.g. a tax exemption/reduction). The compliance of these favorable tax regimes with the legal conditions is quite often under scrutiny of the Belgian tax authorities.

Immovable property is subject to an immovable WHT (also called 'real estate tax') due on a yearly basis to the region in which the property is located. This tax is calculated as a percentage of the so-called 'cadastral income' of the property (a kind of 'deemed' rental income). This deemed rental income should constitute the average normal net income of one year (based on rental incomes of similar properties in 1976). Since the cadastre has not been updated since 1976 and since this merely concerns a fictitious income, this 'deemed' rental income can only be considered as a presumed income, which generally will not match the actual income the immovable property could generate.

The tax rate depends on where the property is located (as it is a combination of regional, provincial, and communal tax).

Machinery and equipment can also be considered as immovable property if certain conditions are met (e.g.

sustainable connection to the property although intrinsically being movable property).

24. Are there any environmental taxes payable by businesses?

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

At a regional level, environmental taxes are mostly levied on different kinds of waste and winning and discharging of water.

Following regulations at the EU level (Regulation 2023/1773 of 17 August 2023), establishing a Carbon Border Adjustment Mechanism (CBAM), the Belgian legislator has recently implemented the legislation in this regard as well.

CBAM initially applies to certain imported products from the most carbon-intensive industries. During the transitional period (from October 1, 2023, to December 31, 2025), importers of CBAM goods (or their indirect customs representatives) must submit a quarterly CBAM report to the European Commission which was due for the first time on 31 January 2024. Starting 1 January 2026, the obligations will expand to include the submission of an annual CBAM declaration and the purchase of CBAM certificates.

25. Is dividend income received from resident and/or non-resident companies taxable?

Dividends received by a Belgian company are first included in its taxable basis on a gross basis when the dividends are received from a Belgian company or on a net basis (i.e. after deduction of the foreign WHT) when they are received from a foreign company.

Provided certain conditions are met, 100% of the dividend income can be offset by a Dividends Received Deduction (DRD). Any unused portion of the DRD from dividends received from a European Economic Area (EEA) subsidiary or a subsidiary from a country with which Belgium has concluded a DTT with a non discrimination clause on dividends can be carried forward to future tax years (taking into account the possible limitations). The same also applies for dividends from Belgian subsidiaries.

The DRD is subject to a (i) minimum participation condition; a (ii) taxation condition and a (iii) minimum holding period of one year.

The taxation condition not only includes the prerequisite that dividends should be received from a normally taxed company (this means (1) subject to a corporate tax regime similar to that in Belgium; (2) be taxed at a minimum rate of 15%; and (3) not be included on the EU "black list" of non-cooperative jurisdictions), but several other specific requirements and/or specific anti-abuse conditions are equally applicable.

26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

Belgium hosts significant political and international institutions, such as the European Union, NATO, the World Customs Organization, and Eurocontrol. A traditional view is that Belgium also has an extensive network of double taxation treaties (DTTs), which helps to effectively avoid double taxation.

In addition, tax incentives on innovation/intellectual property are also attractive and Belgium has a favorable tax regime regarding capital gains on shares.

Contributors

Patrice Delacroix
Attorney PwC Legal | Partner
patrice.delacroix@pwc.com

Véronique De Brabanter
Attorney PwC Legal | Director
veronique.de.brabanter@pwc.com