

Belgium

This chapter is based on information available up to 23 March 2009.

Introduction

Corporate income tax is levied on the worldwide income of resident companies. Belgian-source income of non-resident companies is subject to the income tax on non-residents. An austerity surcharge is levied on these two income taxes. In addition, companies must pay social security contributions. A VAT system applies.

The currency is the euro (EUR).

1. Corporate Income Tax

1.1. Type of tax system

The Belgian corporate tax system is a classical double taxation system, modified by an exemption for dividends from qualifying participations held by corporate shareholders (see 2.2.) and a reduced rate for dividends from participations held by individual shareholders.

1.2. Taxable persons

Only entities with legal personality are subject to corporate income tax. According to the Income Tax Code, which governs corporate income taxation, taxable persons include resident companies, associations, cooperatives, establishments and organizations engaged in a business or other profit-making activities. Limited partnerships and partnerships limited by shares have legal personality and are therefore subject to corporate income tax at the level of the partnership.

Non-resident entities, with or without legal personality, that have a legal form comparable to the above-mentioned Belgian entities are subject to income tax on non-residents (see 6.2.).

Resident legal entities not engaged in a business or in other profit-making activities are subject to the tax on legal entities, instead of the corporate income tax. Such entities include the state, provinces, communities, inter-community organizations and resident non-profit organizations. This special tax falls outside the scope of this survey.

The most important forms of legal entities are the corporation (SA/NV) and the limited liability company (SPRL/BVBA).

1.2.1. Residence

A legal entity is a resident of Belgium if it has its legal seat, main establishment or place of effective management in Belgium.

1.3. Taxable income

1.3.1. General

Generally speaking, the taxable base for corporate income tax purposes is the worldwide income, less allowable deductions. All income derived by a company constitutes taxable business income (profit).

The Income Tax Code describes six successive steps to determine the taxable base of the company, starting from the financial statements:

- (1) profit determination (increases in reserves, non-deductible expenses and distributed dividends);
- (2) classification of the profit according to its source (Belgian-source profit, profit from non-treaty countries, profit from treaty countries);
- (3) deduction of profit from treaty countries and other exempt profits;
- (4) deduction of intercompany dividends (participation exemption);
- (5) use of previous losses; and
- (6) investment deduction.

1.3.2. Exempt income

For exempt capital gains and dividends, see 1.4. and 2.2., respectively.

1.3.3. Deductions

Deductible expenses are those incurred or borne by the company during the financial year in order to obtain or safeguard taxable business income. To be deductible, the expenses must be proven by documents. Deductible expenses include financial charges (interest on loans), expenses related to the use of immovable property (rent, maintenance) and to the use of movable property (royalties), remuneration (including social security contributions), etc. The “immovable withholding tax” (see 3.2.) and the so-called disguised commissions tax (see 3.1.) are deductible.

Deduction of the following items is disallowed:

- Belgian direct taxes, such as the corporate income tax itself;
- special social security contributions for the closure of companies (see 3.);
- certain penalties;
- certain benefits granted by the company (even if those are taxed at the level of the receiving company);
- non-deductible pensions;
- capital losses on shares;

- interest, licence fees and service fees directly or indirectly paid to any foreign company, establishment or individual if, according to the law of the country where they are established, those items are not subject to tax, or are subject to a tax which is considerably more favourable than that in Belgium;
- 31% of restaurant costs;
- 50% of entertainment expenses (other than restaurant); and
- 10% to 40% of car costs, depending on the emission level.

1.3.4. Valuation of inventory

Belgian tax law does not contain specific provisions regarding methods of valuation of inventory. Therefore, the rules of accounting law apply for tax purposes. According to accounting law, inventory must be valued at cost or replacement value, whichever is lower.

The four permitted methods of valuation of inventory are the FIFO and LIFO methods, the unit method and the average weighted price method. No restrictions apply with respect to the application of those methods.

1.3.5. Depreciation and amortization

Depreciation of business assets must be taken every year, irrespective of the amount of corporate income. Depreciation is taken starting from the financial year in which the asset was acquired or produced. Delayed depreciation is not allowed.

Depreciation is calculated on the basis of cost price and the useful life of the asset. The law provides for two methods of depreciation, i.e. the straight-line method and the declining-balance method. The straight-line depreciation is the normal method. Depreciation periods and rates are normally fixed by agreement between the taxpayer and the tax authorities, although for certain assets rates are set by administrative instructions (e.g. commercial buildings 3%; industrial buildings 5%; machinery and equipment 10% or 33%, depending on the type; rolling stock 20%; intangible fixed assets 33.3%, when relating to research and development, 20% in other cases; know-how 10%).

The declining-balance depreciation is generally optional. However, intangible fixed assets (except for investments in the audio-visual sector), cars and fixed assets which are depreciated by the owner but whose right to use has been transferred, must be depreciated on a straight-line basis.

Self-created goodwill may not be depreciated. Under accounting law, acquired goodwill, in principle, must be depreciated on the basis of the straight-line method in not more than 5 years. Under tax law, however, acquired goodwill must be depreciated in a period longer than 5 years on the basis of the straight-line method (normally 10 years).

For accelerated depreciation, see 1.7.1.

1.3.6. Reserves and provisions

Tax-free reserves and provisions are permitted under certain conditions prescribed by law and administrative instructions. The main conditions are the following:

- the reserve or provision must relate to a specific cost;
- the cost or loss must burden the result;
- the cost or loss must be probable in light of activities or events that occurred during the financial year and still exist at the end of the financial year; and
- the formal requirements are fulfilled, e.g. that the costs or losses be booked on separate accounts.

The ceilings previously applicable to the provisions for bad debts have been abolished.

Small and medium-sized companies may, under certain conditions, set up a tax-exempt investment reserve of up to 50% of the profits with a maximum of EUR 37,500. The additions to the reserve are reduced by capital gains on shares, cars used for business purposes and gains on debt claims on managers, shareholders and their spouses or children and any decrease of paid-up capital. The investment reserve must be invested within 3 years in depreciable (tangible or intangible) assets, for which the company is entitled to an investment deduction (see 1.7.2.). If the reserve is not used within 3 years, it must be added to the profits.

1.4. Capital gains

Capital gains realized on the disposal of business assets are regarded as business income and, therefore, normally subject to taxation at the ordinary rates.

Capital gains on shares or participations are exempt if the dividends relating to such shares or participations qualify for the participation exemption (see 2.2.) at the moment the gains are realized. Note that the minimum participation requirement for the dividend exemption does not apply to the capital gains exemption. The exemption applies only as far as the gains are higher than previously deducted capital losses on these shares or participations.

Rollover relief is granted for gains on fixed assets held for business purposes for more than 5 years and for gains realized in respect of damages, expropriations and similar events. In such cases, the gains will be subject to corporate income tax over the period of depreciation of the reinvested assets if the proceeds are reinvested adequately in depreciable non-financial fixed assets within 3 years (or 5 years for buildings, ships and aircraft). The amount of depreciation taken on the new assets and corresponding to the amount of the capital gain is taxed as income in the same year the depreciation is taken. The untaxed part of the capital gain will only remain exempt if it remains recorded as a liability in a separate account and is not used as a basis for distribution of profits. If no reinvestment is made within the reinvestment period, the capital gain will be taxed during the year in which the reinvestment period ends. In addition, the taxpayer will be liable for interest on the related corporate income tax.

1.5. Losses

1.5.1. Ordinary losses

Carry-forward of losses is unlimited in time. However, losses may not be carried forward if there is a change in ownership which does not meet justified financial and economic needs.

Carry-back of losses is not allowed.

Special rules limit the deduction of losses where the company is involved in certain tax-exempt reorganizations, such as mergers and divisions. In order to counteract transactions whereby a company shifts its profits to a related company (including reorganizations), the law provides that losses are not deductible from the profits to the extent of abnormal or gratuitous advantages received.

Companies having activities abroad can set off foreign losses according to a well-defined scheme:

- losses from a treaty country are set off first against income which is exempt in Belgium under a treaty, second against income from non-treaty countries and finally against domestic income;
- losses from a non-treaty country are set off first against foreign income from non-treaty countries, second against income which is exempt in Belgium under a treaty and finally against domestic income; and
- domestic losses will be set off first against domestic income, second against foreign income from non-treaty countries and finally against income which is exempt in Belgium under a treaty.

1.5.2. Capital losses

In general, capital losses are deductible for corporate income tax purposes. However, capital losses on shares or other participations are generally not deductible.

1.6. Rates

1.6.1. Income and capital gains

1.6.1.1. Basic rates

The basic corporate income tax rate is 33%, increased to 33.99% by the 3% austerity surcharge (see 1.6.1.2.).

The following progressive rates apply to companies with taxable income up to EUR 322,500:

Taxable income (EUR)	Rate (%)
up to 25,000	24.25
25,000 – 90,000	31
90,000 – 322,500	34.5

These rates are increased to 24.98%, 31.93% and 35.54%, respectively, by the 3% austerity surcharge.

The progressive rates are not applicable to:

- companies owning participations exceeding certain limits (financial companies);
- companies whose shares are at least 50% owned by one or more companies;

- companies whose dividend distributions exceed 13% of the paid-up capital at the beginning of the financial year;
- companies that do not pay earned income of at least EUR 36,000 to at least one of the directors or active partners (if the taxable income of the company is less than EUR 36,000, the earned income should be equal to the taxable income);
- companies that are members of a group of companies which includes a coordination centre (see 1.7.5.); and
- collective investment companies.

1.6.1.2. Austerity surcharge

An austerity surcharge is levied on income taxes due from both resident and non-resident taxpayers. The surcharge is calculated at a rate of 3% on the income tax actually due as computed before the deduction of withholding taxes, advance payments and foreign tax credits and before the application of the increases for insufficient advance payments. The surcharge is subject to the same rules as the tax upon which it is levied.

1.6.2. Withholding taxes

Although corporate income tax is levied on a company's total income by assessment, the tax is levied on certain items by way of withholding. For withholding tax rates on payments to non-residents, see 6.3.

1.6.2.1. Dividends

In general, domestic dividends are subject to a 25% withholding tax. The rate is reduced to 10% if the dividends result from a (partial) redemption of shares.

The withholding tax is creditable against the recipient's corporate income tax liability if the shares are held for a continuous period of at least 1 year, and refundable if it exceeds the corporate income tax due. This does not apply, however, if the recipient of the dividends does not have the full ownership of the shares giving rise to the dividends. The withholding tax is not creditable if the dividend distribution gives rise to a write-down of the value of the shares or a capital loss.

There is no withholding tax on dividends paid by resident subsidiaries to resident parent companies if:

- both the subsidiary and the parent company are subject to Belgian corporate income tax;
- the parent company holds at least 10% (15% before 1 January 2009) of the capital in the subsidiary; and
- the parent's minimum shareholding has been held for an uninterrupted period of 1 year.

If shares have not been held for a period of at least 1 year when dividends are distributed, the exemption from withholding tax applies provisionally provided the parent company undertakes to maintain its holding until the expiry of the 1-year period. In this case, the subsidiary must still withhold tax, but need not remit it to the tax authorities unless the parent company fails to maintain its holding.

Foreign dividends are also subject to the 25% withholding tax if received through a Belgian bank, other credit institution or other resident paying agent. The domestic

withholding tax is currently not levied on foreign dividends in normal situations, provided that certain formalities are complied with. The tax remains chargeable on:

- dividends derived by resident investment companies; and
- dividends derived by resident (ordinary) companies from non-resident investment companies.

1.6.2.2. Interest

In principle, interest is subject to a withholding tax of 15%. The withholding tax is creditable against the corporate income tax, but only if the company has the full ownership of the capital giving rise to the interest. However, various types of interest are exempt from withholding tax if paid to a resident company that is subject to Belgian corporate income tax, including interest on government bonds, registered bonds, mortgage loans on Belgian immovable property and bond interest paid by non-residents.

1.6.2.3. Royalties

Royalties paid to resident companies are not subject to withholding tax but only to corporate income tax on their net amount (i.e. gross amount less expenses).

1.7. Incentives

Belgium grants various tax incentives, of which only the most important are mentioned here.

1.7.1. Accelerated depreciation

Accelerated depreciation is available under law or administrative rulings. Qualifying assets include:

- newly launched sea ships (depreciation in 8 years: 20% in the first year, 15% in the 2 following years and 10% in the remaining years) and other ships (10% per year);
- plant and machinery, with the exception of buildings used for scientific research (depreciation in 3 years, i.e. 33.33% per year);
- qualifying new assets acquired by companies in economic sectors of major importance to the Belgian economy (depreciation in 3 years, i.e. 33.33% per year); and
- costs of establishment, including costs related to the creation of a company (immediate depreciation).

Small and medium-sized companies are during the first 3 years entitled to depreciation equal to double the normal straight-line depreciation. The facility applies to companies which did not exceed more than one of the following criteria in any of the first 3 years: (1) a year average number of staff of 50, (2) a turnover (excluding VAT) of EUR 6,250,000 or (3) a balance sheet total of EUR 3,125,000. The facility never applies if the average number of staff exceeds more than 100.

1.7.2. Investment deduction

Under an investment deduction regime, either a normal or special investment deduction may be taken at the option of the taxpayer.

The *normal* investment deduction is equal to a percentage of the cost price of certain investments. The following deductions apply:

- a deduction of 15.5% (13.5% before assessment year 2010) may be taken by any company for investments in patents and in research and development of new technology beneficial to the environment as well as for energy-saving investments;
- a deduction of 3% may be taken for investments to encourage the recycling of packaging materials for drinks and industrial products; and
- a deduction of 30% may be taken for investments in seagoing vessels.

The *special* investment deduction is a deduction based on the depreciation taken on the asset in which the investment is made. The following deductions apply:

- companies with fewer than 20 employees on the first day of the financial year may take a deduction of 12.5% (10.5% before assessment year 2010) computed on the depreciation taken on the asset in which the investment is made; and
- for environmentally friendly investments in research and development, any company (regardless of the number of employees) may take a deduction of 22.5% (20.5% before assessment year 2010) computed on the depreciation taken on the asset in which the investment is made.

Unused investment deductions due to insufficient income may be carried forward, subject to limitations.

Furthermore, with respect to specific assets, provisions exist which are equivalent to an investment allowance: up to one half of the profits from the sale of petroleum or natural gas products extracted in Belgium are exempt, provided that this amount is reinvested in the company within 5 years.

Small and medium-sized enterprises (SMEs) and the self-employed may deduct 22.5% (20.5% before assessment year 2010) of an investment in safety measures either in the year of the investment or the following year. The deduction is available in addition to the depreciation on the investment, which is already allowed under the existing legislation. The safety investment deduction applies to all investment which is in accordance with the recommendations of the local police district regarding preventative measures. For SMEs established as corporations, the deduction is applied together with the tax-exempt investment reserve (see 1.3.6.).

The investment allowance for patents and research and development of new technology beneficial to the environment and spread investment allowance for research and development of new technology beneficial to the environment may not be used by companies opting for a tax credit for research and development (see 1.7.3.).

If part of the investment deduction in a certain year remains unused, the unused part may be deducted in subsequent years with a limit of EUR 858,330, or 25% of the unused part if it exceeds EUR 3,433,310 (from assessment year 2010). For companies which have opted to apply the research and development credit (see below), the unused part which may be deducted in subsequent years is limited to EUR 429,160, or 25% of the unused part if it exceeds EUR 1,716,660.

1.7.3. Tax credit for research and development

Companies investing in research and development may opt to apply a tax credit of 33.99% of the invested amount (equal to the general corporate income tax rate increased by the austerity surcharge). For small and medium-sized companies the tax credit is:

Taxable income (EUR)	Rate (%)
up to 25,000	24.98
25,000 – 90,000	31.93
90,000 – 322,500	35.54

The credit is calculated on the purchase or investment value of newly purchased or manufactured tangible or intangible assets, which are used for business activities in Belgium.

Furthermore, companies may deduct from taxable income annually EUR 13,250 per every employee working in scientific research.

1.7.4. Notional interest deduction

Resident companies whose financial year equals the calendar year may deduct a notional interest expense from their taxable profits. The deduction is correspondingly granted to non-resident companies that are subject to the income tax on non-residents (see 6.2.) in respect of their Belgian permanent establishment or immovable property (or rights thereon) located in Belgium.

The deduction is based on the company's equity, i.e. its share capital (subject to certain adjustments) and retained earnings at the end of the preceding financial year. The deduction is calculated by multiplying the equity by a fixed percentage determined by the government on the basis of the interest rate on 10-year linear government bonds. The rate for assessment year 2010 will be determined as the average monthly reference index for such bonds in 2008. For subsequent assessment years, the applicable rate will be equal to the average of the monthly reference indices of the second year preceding the assessment year concerned for such bonds.

The interest percentage may not exceed 6.5%, and the maximum deviation between the percentages of 2 subsequent years may not exceed one percentage point. If part of the notional interest deduction in a certain year remains unused, the unused part may be carried forward for up to 7 years. However, where there is a change of ownership of the majority participation of a company that is not based on legitimate, financial and economic needs, any transferred notional interest deduction possibility will be lost.

If a company sets up an investment reserve (see 1.3.6.) in a tax year, the notional interest deduction cannot be used in that tax year and the 2 following tax years. In this case, the maximum carry-forward period is extended by the period during which the notional interest was not deducted.

The deduction is not granted to coordination centres, investment companies with a variable capital (SICAV/BEVEK), investment companies with a fixed capital (SICAF/BEVAK), companies investing in debt claims

(SIC/VBS), cooperative participation companies and shipping companies taxed under the tonnage tax regime (see 1.7.6.).

1.7.5. Coordination centres

Coordination centres can only be established by a multinational group of companies either as a resident company or as a branch of a non-resident company. A coordination centre may only perform certain auxiliary or preparatory activities for the benefit of the members of such a group. These may include advertising, insurance, centralization of financial transactions, etc.; banking activities are explicitly excluded.

Qualifying coordination centres that are approved by a Royal Decree are granted a favourable tax treatment for a period of 10 years (renewable). For these coordination centres the taxable income is determined as expenses and operating costs, excluding personnel and financial expenses. However, the taxable income may not be less than the total sum of the disallowed expenses and the abnormal and gratuitous advantages granted to the coordination centre. The taxable income so determined is subject to the normal rate of corporate income tax.

For coordination centres established before 2003, the taxable income was determined as 8% of expenses and operating costs, excluding personnel and financial costs. Expiring permits under the old regime, which has to be phased out by the end of 2010, could be renewed until 31 December 2005. Furthermore, coordination centres are subject to a special annual tax of EUR 10,000 per full-time employee, with a maximum of EUR 100,000. On 13 November 2007, the European Commission decided that the transitional period for those centres whose authorization expired on or shortly after 12 February 2003 (on which date the regime was held to be incompatible state aid), or whose request for authorization renewal was still pending at that date should have run from 17 February 2003 to 31 December 2005 and not until 31 December 2010 as indicated in a Belgian law of 26 December 2007.

The European Commission approved a new coordination centres regime on 8 September 2004. The main aspects of the new regime are that the tax base will include finance and personnel costs, coordination centres will become subject to capital tax at a rate of 0.25% or 0.3%, abnormal or gratuitous advantages must be included in the tax base of new coordination centres as long as these have to be included in the tax base of other Belgian companies and the exemption from withholding tax on dividends, interest and royalties must be extended to other companies established in Belgium. However, the new regime will not be implemented in Belgian law pursuant to the introduction of the notional interest deduction discussed in 1.7.4.

1.7.6. Tonnage tax regime

Upon request, companies (and private entrepreneurs) may elect to report taxable income for corporate income tax as a certain percentage of the volume transported if they operate sea vessels sailing under the flag of Belgium or another EU Member State for the transport of