

# Doing Business in Belgium



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Vandelanotte

More than accountants



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FOR ANY SPECIFIC INFORMATION ABOUT 'DOING BUSINESS IN BELGIUM', CONTACT US AT [TAX@VDL.BE](mailto:TAX@VDL.BE)

## 1. DISCLAIMER

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The information in this guide does not constitute advice on any particular matters and should not be considered as such.

While reasonable care has been taken in the preparation of this publication, Vandelanotte accepts no responsibility for errors it may contain or for losses sustained by a person that relies on it, caused by negligence or otherwise.

## 2. GENERAL INFORMATION

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### **Geography and structure of the Belgian State**

Belgium is a monarchy and a federal state, situated along the North Sea in the centre of Europe. Belgium shares borders with the Netherlands, France, Germany and Luxembourg. The surface area of the country is about 30.500 km<sup>2</sup> and the population is about 11 million people. The gross domestic product (GDP) of Belgium in 2014 was 402 billion euro.

Belgium is divided into three regions and into three communities. Each region and community has executive and legislative powers. The division into regions relates to territorial issues. The three regions are the Brussels-Capital region, the Flemish region and the Walloon Region. The division into communities is based on language. There are three official languages in Belgium: Dutch, French and German. The three communities are the Flemish community (Dutch-speaking), the French community and the German Community.

Brussels is not only a region, but it is also the capital of Belgium. The city is the home location to many European Institutions and a leading international business centre.

Vandelanotte provides its services in all three these regions and is able to provide them in English, French and Dutch. Vandelanotte has seven offices: five in Flanders, one in the capital Brussels and one in Wallonia. The head office of Vandelanotte is in Kortrijk, West-Flanders.

### **Economy**

The Belgian economy is well integrated with Europe and the rest of the world. Belgium is an attractive base for many companies active in European markets because it has an open economy. There are many active business sectors, the most important are industry, transport and logistics, pharmaceuticals, ICT, agro-food sector, ...

Belgium has a well-developed road- and rail-network. There are several seaports. The country's main seaports are located in Antwerp and in Zeebrugge. In addition, Antwerp is the second largest seaport of Europe. Vandelanotte also has an office in Antwerp. The extensive inland waterway network connects the major Belgian seaports with other European inland waterways.

Belgium has a mainly export-oriented economy. The trade balance (difference between exports and imports) is manifestly positive. Belgium exports mainly intermediate goods (machinery and equipment), but also many chemical and related products.

## Investing in Belgium

There are several reasons to invest in Belgium:

- ***Strategic location:***

Belgium is located in the centre of Europe, adjacent to important countries like Germany, the Netherlands, France and Luxembourg. A number of European business centres are located within 300 km radius: Paris, London, Amsterdam and Frankfurt.

- ***Excellent infrastructure:***

Well-developed airports, seaports, roads and railways.

- ***Helpful authorities:***

Belgian authorities (federal and regional) will support foreign investors by providing advice on certain matters. The authorities will support the foreign investors by providing assistance in issues concerning manufacturing or R&D facilities, logistic activities, legal advice, government subsidies, etc. For more information we refer to the website [www.investinlanders.be](http://www.investinlanders.be) or [www.investinwallonia.be](http://www.investinwallonia.be) or [www.investinbrussels.com](http://www.investinbrussels.com).

- ***Quality of the workforce:***

Belgians are flexible, innovative, loyal and excellent at problem-solving. The Belgian employees are some of the most productive in the world. The high quality of the Belgian education system is very important to potential investors. The education is regulated and for the larger part financed by one of the three communities.

- ***Quality of life:***

Belgium is considered to have a high standard of living, as testified by its excellent health care, housing, education and infrastructure. The Belgian healthcare system is known as one of the best in the world. High quality medical care is provided at a low cost price.

- ***Language:***

The knowledge of languages in Belgium is also an important asset. In general, most of the inhabitants speak Dutch, French and English.

### 3. SETTING UP A BUSINESS

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#### 3.1. BRANCH VERSUS SUBSIDIARY

A Belgian branch (permanent establishment) of a foreign company is an extension of the head office of the foreign company. It is not a separate legal entity, therefore there are no shareholders. A branch has no minimum assigned capital requirement and requires no own board of directors. A branch is represented by a legal representative appointed by the foreign company. This legal representative does not need to have the Belgian nationality. The foreign (parent) company is fully liable for the liabilities of the branch and the annual financial statements of the foreign company must be filed yearly with the National Bank of Belgium.

In a tax point of view, branches are permanent establishments of non-resident companies. The permanent establishment will pay corporate income tax in Belgium on its income earned in Belgium.

Setting up a branch, however, requires translation of a series of documents, apostils, legalisations of signatures, etc. of the foreign company. This can discourage the shareholders of certain countries and make them opt for a subsidiary. Depending on the area of registration the documents related to the branch must be drafted in one of the official languages of Belgium: Dutch, French or German.

A foreign company shall logically remain fully liable for all commitments of its branch office. On the contrary, branch offices appear to be tax friendlier as they are not submitted to any dividend withholding taxes on their profits. A subsidiary is a separate legal entity with Belgian legal personality which will not share any liability with its parent company.

#### 3.2. FORMALITIES FOR SETTING UP A BUSINESS

##### Branch

Filing a branch must be carried out at the clerk's office of the Court of Commerce in the judicial district of the branch office's location. Certain documents and information must be submitted in order to set up the branch:

- Address and activities of the branch;
- Identity of the representatives;
- General information on the foreign company (consolidated financial statements, certificate of registration, articles of association, ...);
- Corporate resolution of the foreign company relating to the opening of the branch.
- ...

All these documents need to be translated in the official language of the jurisdiction where the branch is situated. The documents also need to be legalized by a public notary in the foreign company's jurisdiction.

The translated documents and information need to be published in the Belgian Official Gazette by the clerk's office. Furthermore, the most recent annual financial statements of the foreign company must be filed yearly with the National Bank of Belgium.

In addition the branch needs to obtain a corporate registration number (at the Central Company Bank) and needs to apply for a VAT identification number (at the local VAT administration) if necessary.

The administrative costs depend on the volume of the documents that need to be filed and translated. Most of the costs relate to translating. If all documents are prepared and filed in one time, the total time necessary for filing a branch can be estimated to two to three weeks.

## Subsidiary

The different formalities in order to incorporate a subsidiary can be summarized as follows:

- Draft an incorporation deed;
- Draft a financial plan (only for companies with limited liability);
- Deposit of the share capital in a blocked bank account (only in the event of a contribution in cash);
- Draw up the appraisal reports (only in the event of a contribution in kind);
- Notarize the incorporation deed (not for all company forms);
- Register the incorporation deed;
- File for publication in Belgium's Official Gazette;
- Obtain a corporate registration number at the Crossroads Bank for Enterprises (BCE);
- Apply for a VAT identification number (if necessary).

The incorporation deed includes the articles of association and the minutes of the first general meeting of the shareholders, whereby the directors will be appointed.

A financial plan is needed in order to establish a company. The plan will provide a detailed overview of financial resources and requirements that need to be fulfilled in the first two years of activity of the company. A financial plan is required for all companies with limited liability.

The legislator has determined a number of cases in which the founders still can be held personally liable. One example is bankruptcy, pronounced in three years after the creation, if it appears that the capital stock at the foundation was insufficient for the normal exercise of the proposed activity over at least two years. To this end, the financial plan is very important.

In addition, the notary will need a statement of the directors that they accept their function and a business certificate which proves the capacity of the person signing the deed to represent the founding company.

A legal entity must file the articles of incorporation at the registry within 15 days of the final articles of association being drawn up. The company acquires a legal personality only from the date the articles of association are lodged at the commercial court. The most important articles are published in the Appendix to the Belgian official gazette.

For certain business activities, a licence or permit specific to the sector in question is needed. For example: anyone who operates an establishment where food is manufactured or imported, requires a licence from the Federal Agency for the safety of the Food Chain (FASFC).

The time necessary to carry out the formalities can be estimated to about one to three weeks for the incorporation of the company and two to three additional weeks for the BCE and VAT registrations.

Vandelanotte can help foreign investors with all the formalities in order to start up a branch or a subsidiary.

### 3.3. KINDS OF CORPORATIONS

The most important company forms are the Private limited liability company (BVBA) and the Public limited company (NV). Besides these two, there are a few other, less frequently used company forms.

#### **Private limited liability company (BVBA/SPRL)**

The private limited liability company is formed by one or more partners (physical or legal persons) whose commitment is limited to their contribution.

The minimum required share capital is 18.550 euro, of which at least 6.200 euro must be paid-up immediately. In case the company is set up by a single individual, it must be paid-up for 12.400 euro.

This is the only type of company that can be set up by a single individual, this is usually a physical person but this can also be a legal person. If the only founder is a legal person, such person will be jointly and severally liable for all commitments of the company.

At least one director of the private limited liability company has to be appointed. This can be a statutory director or a non-statutory director. A statutory director is appointed in the articles of association and can only be dismissed if all shareholders agree or for compelling reasons. A non-statutory director can be appointed and dismissed by the general meeting based on a simple majority of votes.

To transfer the shares of the company the approval of half of the shareholders, who represent at least three-fourths of the capital, is necessary.

To set up a private limited liability company you have to fulfil some legal and administrative obligations. The notarial deed is necessary to set up the company.

#### **Public limited company (NV/SA)**

The public limited company is a legal entity in which at least two shareholders are willing to invest capital. The liability of the shareholders is limited to their contribution. The minimum required share capital is 61.500 EUR, each share must be paid up for at least one quarter.

A public limited company has a Board of Directors. In principle, the Board of Directors consists of three directors. When the company has only two shareholders, the articles of association can provide that there will be only two directors. The directors can appoint a managing director for the day-to-day running of the company.

The shares are freely transferable.

There are some legal and administrative obligations with regard to a public limited company. To set up a public limited liability company a notarial deed is necessary.

This type of company is mainly used by large enterprises, but it is also popular with SME's.

### **Cooperative company with limited liability (CVBA/SCRL)**

A cooperative company with limited liability is a company, a legal entity, set up by at least three shareholders. The shareholders (physical or legal persons) are liable for the amount of the contribution.

The minimum capital is 18.550 euro, of which at least 6.200 euro must be paid up and each share must be paid up for one quarter.

New shareholders may join by subscribing to new shares, issued to increase the capital. The criteria to join the company are determined in the articles of association: according to very strict accession criteria by which access is limited or by very general standards by which the company is opened up for everyone.

One or more directors run the company, whether partners or not. The articles of association describe the procedures for the appointment and the dismissal.

A notarial deed is necessary to set up the company.

### **General partnership (VOF/SNC)**

A general partnership is a company and is set up by at least two or more partners (physical or legal persons). It's purpose is to carry on a civil or commercial activity under a corporate name.

The partners of a general partnership are jointly and severally liable for all commitments entered by the company.

There is no minimum capital required in the general partnership.

To set up a general partnership the legal and administrative obligations are less strict. A notarial deed is not necessary, a private deed is sufficient. The private deed needs to be registered.

This type of company is often used to structure a partnership between people in liberal professions and joint ventures.

### **Limited partnership (Comm. V/SCS)**

A limited partnership is a partnership between one or more limited partners and one or more managing partners. The limited partners only bring in capital and are limited liable to the amount of the contribution they have paid or pledged. The managing partners are jointly and severally liable.

There is no minimum capital required for an ordinary limited partnership.

The legal and administrative obligations are less strict. A notarial deed isn't compulsory, a private deed is sufficient but it has to be registered.



### **Partnership limited by shares (Comm. VA/SCA)**

A partnership limited by shares consists, as in an ordinary limited partnership, of limited and managing partners. There must be at least two shareholders. The limited partners are limited liable and the managing partners are jointly and severally liable.

The partnership is managed by the managing partners designated in the articles of association. The managing partners have a right of veto, unless otherwise stated in the articles.

The minimum capital of a partnership limited by shares is 61.500 EUR.

The shares of a partnership limited by shares are freely transferable and can be traded to third parties.

Unlike the ordinary limited partnership, a notarial deed must be drawn up.

### **Cooperative company with unlimited liability (CVOA/SCRI)**

A cooperative company with unlimited liability is a company set up by at least three shareholders. Physical and legal persons may be shareholders. The shareholders are jointly and severally liable. The company is also managed by directors.

To set up a cooperative company with unlimited liability there is no minimum capital required and a private deed is sufficient. The private deed must be registered.

### **Non-profit organisation (VZW/ASBL)**

A non-profit organisation is a legal entity and consists of at least three persons and pursues a non-profit making goal. It is possible to charge membership fees and organise activities in return for payment where these are compatible with its purpose. This non-profit organisation can't distribute any profits to its members.

There is no minimum capital required.

The articles of association may be drafted by a notarial or a registered private deed.

## **3.4. BUSINESS INCENTIVES**

Besides its geographic location and the excellent transportation networks, there are several other business incentives in Belgium:

- Cash grants for investments in tangible fixed assets;
- Ecological subsidy;
- Reduction of social security contributions;
- Expatriate tax incentives;
- R&D personnel tax incentives;
- Patent tax incentives;
- Overtime, night and shift work tax incentives;
- ...

## 4. TAXATION

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### 4.1. INTRODUCTION

If a business is operated in an individual's own name, the profits will be subject to personal income tax. If a business is operated as a company, the profits will be subject to corporate income tax. The taxable profits are determined in a similar way, but the rates and some tax deductions are different. The percentage in the case of personal income tax may be as high as 50% plus local surtax, whereas the maximum tax rate for corporate income tax is 33,99%.

Non-profit organizations are liable to the legal entities income tax.

The legal basis for the personal income tax, corporate tax and the legal entities income tax, is the Belgian Income Tax Code of 1992 (BITC 1992).

Besides these direct taxes Belgium knows VAT, registration duties, inheritance tax, customs duty, excise duty and some other miscellaneous taxes.

### 4.2. CORPORATE INCOME TAX

#### 4.2.1. GENERAL OVERVIEW

##### **Who is liable to Belgian corporate income tax?**

All companies, associations, bodies and institutions that meet at the same time the following criteria:

- They have corporate status;
- They have their residence (registered office, main site, seat of management or administrative headquarters) in Belgium;
- They are engaged in a business or profit making activity in Belgium or abroad.

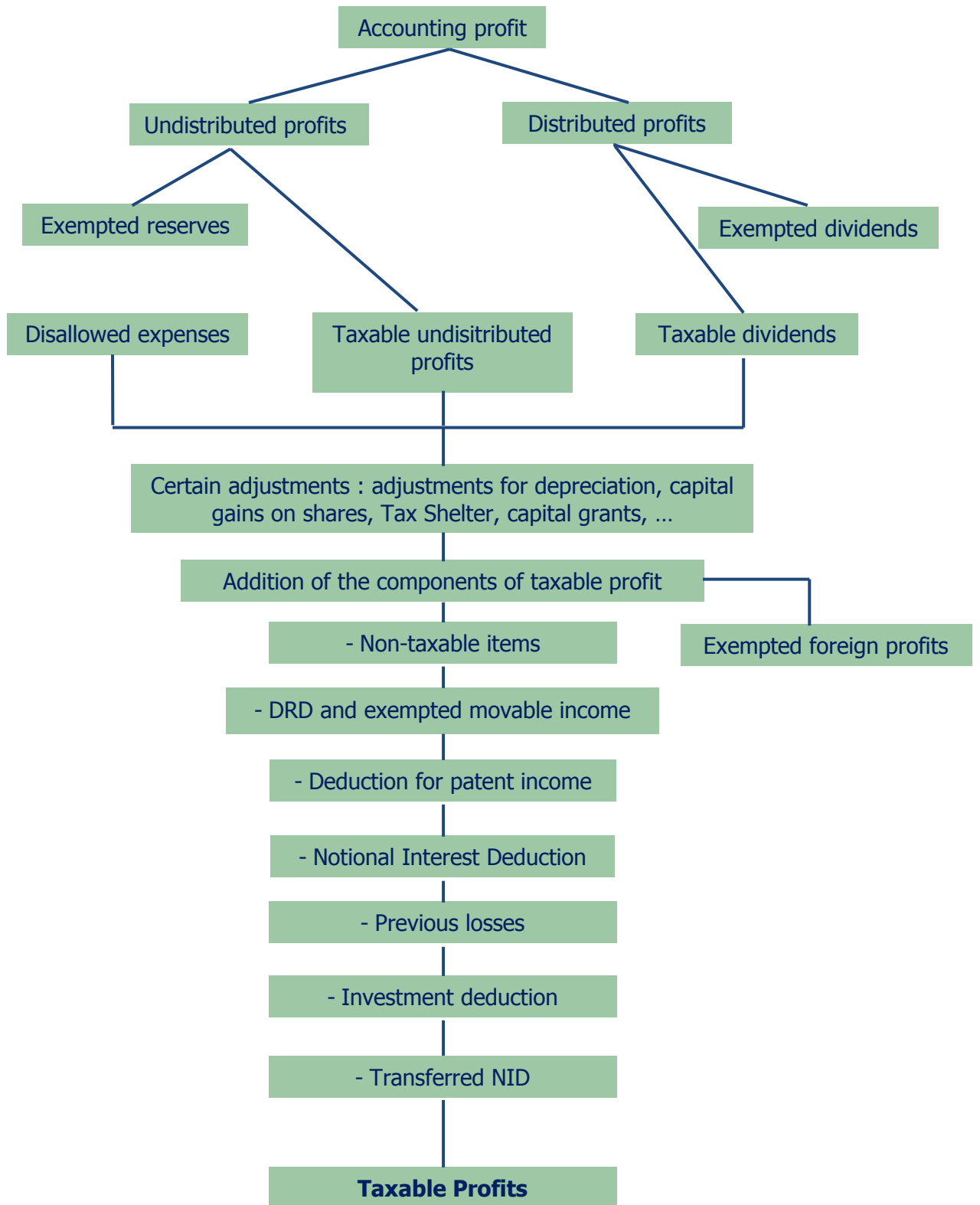
A non-resident company with a Belgian permanent establishment, is taxable on all income derived from the establishment. In addition, the income of real estate located in Belgium, will be taxed in Belgium, even when there is no Belgian branch.

##### **Corporate tax system at a glance**

The taxable income is based on the accounting results as reported in the company's annual financial statements. The taxable profit is the increase (or decrease) of reserves plus disallowed expenses and distributed dividends. The increase (or decrease) of reserves is the worldwide profit as it appears in the financial statements, with some adjustments for differences between accounting law and tax law.

The taxable base will practically always be different from the accounting profit. There are some corrections, known as the nine adjustments. All the corrections after the third correction do not correspond to an accounting deduction but are purely tax operations.

**Diagram of the corporate income tax system**



**Remark:** a lot of rules in the Belgian corporate income tax are dependent of the size of the company. A company is a large company as from the financial year following the financial year in which at least two of the following three criteria are exceeded for the second time (to be considered on a consolidated basis in case of affiliated companies):

- Net turnover of 9.000.000 euro
- Balance sheet total of 4.500.000 euro
- Employees number of 50 (average annual workforce)

→ The size criteria for companies have been modified as from January 1th 2016!

Tax base	
<b>1.</b>	Taxable profit = Increase or decrease in reserves + disallowed expenses + distributed dividends
<b>2.</b>	The distribution of the taxable profit by origin
<b>3.</b>	Exempt foreign income and deduction of non-taxable items
<b>4.</b>	Dividend-received deduction (DRD) and exempted movable income
<b>5.</b>	Patent income deduction (PID)
<b>6.</b>	Notional interest deduction (NID)
<b>7.</b>	Tax losses carried forward
<b>8.</b>	Investment deduction
<b>9.</b>	(Transferred NID)

1. The taxable profit is divided into:

- A. The increase (or decrease) of reserves;
- B. Disallowed expenses;
- C. Distributed dividends.

A. Increase or decrease in reserves

The increase or decrease of reserves is the retained profit adapted by some adjustments. In this operation (from a tax point of view) excessive depreciations, hidden reserves and certain non-deductible provisions or depreciations are added to the tax base.

On the other hand, if the legal conditions are fulfilled, certain reserved profits need to be excluded from the tax base, as they are exempt from tax for the time being or permanently. (e.g. gains on shares, reserve for investment, regional subsidies,...)

*Adjustment for depreciation:*

Acceptable rates:

Fixed assets	Percentage
<b>Office buildings</b>	<b>3%</b>
<b>Industrial buildings</b>	<b>5%</b>
<b>Office furniture and equipment, machine</b>	<b>10%</b>
<b>Formation expenses</b>	<b>20%</b>
<b>IT-equipment</b>	<b>33,33%</b>
<b>Research and development expenses</b>	<b>33,33%</b>
<b>Motor vehicles</b>	<b>20%</b>

When the rates used by the company in the annual financial statements are higher than the acceptable rates, these costs will probably not be tax deductible and a tax adjustment must take place.

A company considered as 'large' must compute the depreciation pro rata temporis from the day of acquisition. SME's are allowed to enter a full depreciation annuity in the year in which the assets are acquired.

### *Gains on shares*

Under certain conditions, capital gains realised on shares are tax exempt. (see '*Capital gains on the sale of participations (shares)*'). The losses realised on shares are not deductible, unless losses due to liquidation and reflecting a permanent loss of paid-up share capital.

### *Reserve for investment*

The reserve for investment is a measure to stimulate investments and is only applicable to small and medium-sized enterprises.

Under certain conditions, it is possible to constitute a tax exempted reserve. This investment reserve is tax free up to 50% of the increase in taxable retained earnings in the taxable period, limited to 37.500 EUR. Following this, the maximum exemption is 18.750 EUR.

It is not possible to combine this measure with the notional interest deduction.

### *Other adjustments*

- Exemption of regional subsidies;
- Partial exemption of capital gains on cars (dependent on the CO<sub>2</sub>-emission);
- Write-offs on trade receivables;
- Repayment of non-deductible taxes;
- Exempted reserve for Tax Shelter investments (the Tax Shelter-regime is an incentive to encourage the production of audio-visual or cinematographic works and stage art);
- Staggered taxation on realized capital gains (taxation of capital gains on certain intangible and tangible fixed assets can be staggered if an amount equal to the sales price is reinvested in specific assets within a specified period);
- Exempted capital grants (Staggered taxation is possible for capital grants which are granted by the government in order to purchase or manufacture tangible or intangible fixed assets, exemption of some regional capital grants);
- ...

### B. Disallowed expenses

Deductible professional costs are costs made by the company incurred or borne during the taxable period to obtain or retain taxable income. The authenticity and the amount of the costs has to be proven.

Disallowed expenses are non-deductible expenses. They are accepted as an 'accounting cost', but not accepted as a 'tax cost'.

Examples of disallowed expenses:

- Belgian corporate income taxes (foreign income taxes are deductible);
- Penalties, except the proportional VAT penalties;
- Car expenses: the financial charges and the car phone are fully deductible, the fuel costs are 75% deductible, the other car expenses are deductible for 50 - 100% depending on the CO<sub>2</sub>-emission;
- Restaurant expenses for 31% of the amount;
- Expenses for clothing (only expenses made for specific professional clothing are deductible);
- Gifts;
- ...

### C. Distributed dividends

Distributed dividends are re-added to the taxable base. A distributed dividend is part of the company's taxable profit, regardless:

- The method of payment (cash, shares, ...);
- The name given to the dividend (ordinary dividends, interim dividends, ...);
- The method of determination (both fixed and variable assignments distributed during or after the end of the financial year are eligible);
- The origin of the profit (capital gains, ...);
- Whether the recipient actually received the dividend.

### **Components of the result on which the deduction limit applies**

There are certain profits on which non of the last six corrections (the non-accounting deductions) are deductible. These profits form the minimum taxable base. The most important ones are:

- Abnormal or benevolent advantages received from a related party;
- Secret commissions (unreported remuneration expenses such as fees, commissions, benefits in kind, etc.);
- 17% of the benefits in kind for company cars (40% if the fuel cost is wholly or partly borne by the company);
- Capital gains on which the 0,412% tax is applicable;
- ...

### 2. The division of the taxable profit by origin

The income of a resident company consists of income of Belgian origin, but can also consist of income earned abroad. The income earned abroad includes the income from real estate situated abroad and the profits which the resident company has obtained abroad (e.g. permanent establishment). In the tax declaration, a distinction needs to be made between income of Belgian origin, income earned in a country with a tax treaty with Belgium and income earned in a country without tax treaty with Belgium.

### 3. Exempt foreign income and deduction of non-taxable items

The profit of a permanent establishment in a country with a tax treaty with Belgium and certain non-taxable items will be deducted from the taxable profit. An example of a non-taxable item is an exempted gift (gifts to universities, cultural institutions, ...).

#### 4. Dividend-received deduction (DRD) and exempted movable income deduction

##### Dividend-received deduction

Received dividends are 95% exempt from corporate income tax, under the following conditions:

- A required holding of 10% or an acquisition price (value) of at least 2.5 million EUR;
- Minimum ownership period of 1 year;
- Participation is held in full property;
- The distributing company does not fall under one of the specific exclusions (in most cases this will mean that the subsidiary must meet the "subject-to-tax requirement").

Following this deduction, the effective tax rate on received dividends is ca. 1,7% (33,99% \* 5%).

Dividends received from certain companies (not meeting the "subject-to-tax requirement") are excluded from the deduction:

- Finance, investment and treasury companies;
- A company which is not subject to corporate income tax (or a similar foreign tax) or which is a resident in a tax haven;
- A company with foreign establishments, which are subject to a tax regime more favourable than the tax regime in Belgium;
- Offshore income: dividends from a company, to the extent that the profits of that company, dividends excluded, arise in another country than its country of residence, and are subject to a favourable tax regime;
- Dividends from a company, not an investment company, which redistributes the dividends it receives, unless at least 90% of the dividends received by the transit company would themselves be eligible for the deduction.

##### Exempted movable income deduction

This is a 100% deduction of certain income from movable property. The intended income is specific income earned on certain shares or obligations issued by some institutions of the Belgian State (e.g. the National Society for housing).

#### 5. Innovation income deduction (IID)

The innovation income deduction is a tax deduction equal to 85% of the net innovation income. The deduction is applicable to income derived from the following intellectual property:

- Patents and supplementary protection certificates;
- Breeders' rights requested or acquired as from 1 July 2016;
- Orphan drugs, i.e. a drug to treat rare diseases, (limited to first 10 years) requested or acquired as from 1 July 2016;
- IP of copyrighted software resulting from a research or development project as defined for the purposes of the partial exemption of wage withholding tax for research and development.

The deductible amount would be 85% of the net R&D-income, restricted in line with the modified nexus approach. The deduction is calculated according to the following formula:

85 % x Net income x [(Qualifying expenditure + Up-Lift) / Overall expenditure] , whereby:

- The "Net income": net income generated with the R&D-activities;
- The "qualifying expenditure" includes all expenses directly related to the IP asset that are made by the relevant group entity itself or that are outsourced to non-related parties;

- The "overall expenditure" is the "qualifying expenditure" increased by the acquisition costs of the IP asset and any costs related to outsourcing to related parties.

Vandelanotte can help you with the formalities in respect of the innovation income deduction in Belgium.

#### 6. Notional interest deduction (NID)

The notional interest deduction can be described as a tax deduction equal to a certain percentage of the adjusted equity. It is a fictitious interest calculated on the equity of the holding (net assets).

The adjusted equity is equal to the equity at the end of the previous year adjusted by:

- The net book value of proper shares, financial fixed assets and shares of investment companies;
- The net book value of buildings and foreign establishment exempted from income tax in Belgium according a tax treaty;
- Unreasonable investments (assets not completely affected to professional purposes);
- Certain elements included in the equity (unrealised gains on investments, capital grants, ...);
- The real estate used by the manager of the company;
- The movement of those exclusions during the accounting year as well as the movement of the capital.

A different percentage applies to large companies than to SME's. The percentage for large companies is lower than the percentage for SME's. The percentage for the financial year 2017 (tax year 2018) is 0,237% for large companies and 0,737% for SME's. Since tax year 2013, unused notional interest deduction can not be carried forward anymore.

#### 7. Tax losses carried forward

Tax losses can be carried forward and can be deducted. A carry back of losses isn't allowed.

#### 8. Investment deduction

It is possible to deduct a part of the acquisition price or manufacturing cost of new investments from the taxable profit. The deduction requires certain conditions among which the most important one is that the asset is used in Belgium for the professional activity of the company.

<b>Rates tax year 2017 (for all companies)</b>	
<b>Patents, environmental-friendly R&amp;D and energy-saving investments</b>	13,5%
<b>Investments in smoke extraction and ventilation systems (hotels, restaurants and cafés)</b>	13,5%
<b>Investments for production and recycling of returnable packaging</b>	3%
<b>Staggered deduction for environmental-friendly R&amp;D</b>	20,5%

For SME's there is an investment deduction of 8% for new investments as from January 1th 2016. The investment can be a fixed or an intangible asset. For investments in the security of company buildings or cars, there is an investment deduction of 20,5% for SME's.



## 9. Transferred notional interest deduction (NID)

Since tax year 2013, the carry forward of new notional interest deduction is no longer possible. NID existing on 31 December 2012 (that could not be deducted of the profits of the taxable period 2012 or a previous taxable period) can be carried forward for seven years. Above one million euro, the carry forward is limited to 60% of the result before this operation.

### **Tax calculation**

Once the tax base of a company has been established (the nine operations), the corporate tax payable can be calculated. To this end, this does not imply the multiplication of the applicable tax rate and the tax base.

There should be taken into account the tax that was paid during the taxable period. Prepayments and withholding taxes can be set off and are repayable. The fixed foreign tax credit (FFTC) relating to interests and royalties can be set off against the corporate income tax but is not refundable. The withholding tax on real estate can not be set off against the corporate income tax.

Companies need to pay the corporate income tax in advance. When a company did not make prepayments or made insufficient prepayments, the tax payable by the company will increase with a certain percentage (2,25% for tax year 2018). This tax surcharge can be avoided by quarterly prepayments. Small and medium-sized enterprises are exempted from surcharges for the first three years.

The prepayments must take place the 10th day of the 4th, 7th, and 10th month and the 20th day of the 12th month of the financial year. When the company's financial year ends on 31 December, the prepayments must take place at the latest on 10 April, 10 July, 10 October and 20 December.

### **Tax rate**

The corporate income tax rate is fixed at 33%. A 3% crisis contribution must be added. In total, the corporate income tax is 33,99%. This is a flat tax.

For small and medium-sized enterprises with a taxable profit less than 322.500 EUR, a reduced rate applies:

<b>Taxable profit (EUR)</b>	<b>Corporate income tax rate</b>	<b>Corporate income tax rate including 3 % crisis contribution</b>
<b>0 – 25.000</b>	24,25 %	24,98 %
<b>25.000 – 90.000</b>	31,00 %	31,93 %
<b>90.000 – 322.500</b>	34,50 %	35,54 %

Certain companies are excluded from the reduced rate:

- Companies owned for at least 50% by one or more companies;
- Companies which do not pay an annual salary of 36.000 euro to one of their directors, or when the taxable profit is less than 36.000 euro, at least a salary equal to the taxable profit. The term salary includes: remuneration, benefits in kind, directors' fees, etc.;
- Companies which distribute more than 13 % of the paid-up capital at the beginning of the financial year as a dividend;

- The 'Financial Companies'. These are companies whose equity and reserves consist of more than 50% in financial assets, unless these participations represent at least 75% of the paid-up capital of the subsidiary;
- Some special companies like certified coordination centres, companies being part of a group to which belongs a coordination centre, investment companies and pension institutions.

### **Tax year and tax return**

The tax year is determined by the date on which the financial accounts are closed. For a company with a financial year ending on 31.12.N, the tax year is the following calendar year N+1. When the financial year ends at another calendar date, the tax year is the calendar year in which the financial year ends.

Examples:

<b>Financial year</b>	<b>Tax year</b>
<b>01.01.2016 – 31.12.2016</b>	2017
<b>01.08.2015 – 31.07.2016</b>	2016
<b>01.10.2015 – 31.12.2016</b>	2017

The annual tax return must be filed within the tax return period. The tax return period may not be shorter than one month starting from the date of approval of the financial statements and may not be longer than six months after the financial year-end.

Vandelanotte can help you complete and file the annual tax return.

## **4.2.2. SOME IMPORTANT CONSIDERATIONS**

### **4.2.2.1. GENERAL TAX RULES**

- Belgium has no special holding company regime;
- Belgium has no domestic fiscal consolidation and no cross-border fiscal consolidation;
- Financing expenses relating to domestic/foreign shareholdings are deductible under certain conditions;
- No restrictions on foreign investments;
- Advance ruling practice applies.

### **4.2.2.2. ANTI-AVOIDANCE LEGISLATION**

- There is a general anti-avoidance provision (GAAR), which has recently been renewed (Art. 344 BITC). The provision is used by the tax administration to disqualify all transactions and structures which have no other goal than tax avoidance;
- In Belgium no CFC (controlled foreign company) rules apply;
- Transfer pricing rules apply. The arm's length principle is codified in Art. 185, §2 of the BITC. This paragraph is the codification into the Belgian legislation of art. 9 of the OECD Model Tax Convention.

Other articles of the BITC relating to transfer pricing are:

- Art. 26: granted abnormal or benevolent advantages are added back to the tax base;
  - Art. 49: basic conditions for the deductibility of expenses;
  - Art. 54: deductibility of the payments of interest, royalties and management/services fees to tax havens or to recipients benefiting from a favourable taxation regime for these payments;
  - Art. 55 and 56: deductibility of interest paid;
  - Art. 344, §2: sale, transfer or contribution of shares, bonds, accounts receivable or other titles to tax havens or to recipients benefiting from a favourable taxation regime need to have economic substance;
- In general, Belgium does not levy exit taxes. However, a company that relocates its corporate seat to another country is deemed to be liquidated for Belgian corporate income tax purposes (with the exception for the European company). The application of this rule can be avoided by keeping a permanent establishment in Belgium;
  - Companies that make payments (exceeding 100.000 euro during a financial year) to tax havens are obliged to report this to the tax authorities. The payments are only deductible when they are reported to the authorities and represent real and sincere operations;
  - Interest is generally deductible to the extent it does not exceed the market interest rate. If a Belgian resident company pays excessively high interest, the excess is added to its taxable income, unless the interest is included in the beneficiary's taxable income. Where interest is paid by a Belgian taxpayer to a Belgian resident company, the limitation on the deductibility of excessive interest does not generally apply.

Interest paid to a company in a tax haven or in a country where interests know a favourable fiscal regime is not deductible, unless the payment corresponds to real and sincere business transactions and the rate is not abnormally high.

Belgian law has two thin capitalization rules:

- The "5:1" rule: interest paid on loans to a group member or to a beneficiary that is not subject to income tax or to a tax regime that is substantially more advantageous than the normal tax regime in Belgium (tax haven) is not tax deductible for the part of the loans that exceeds five times the paid-in capital and taxed reserves of the Belgian company;
- The "1:1" rule: interest paid on loans granted by an individual shareholder or a director of the company is tax deductible only to the extent that the total loan do not exceed the company's paid-in capital and taxed reserves. The excess interest is requalified as a dividend distribution and is generally subject to a 30% withholding tax.

#### **4.2.2.3. TAXATION OF CAPITAL GAINS ON THE SALE OF PARTICIPATIONS (SHARES)**

- Exemption: when the subsidiary is subject to corporate tax or a similar income tax (*see dividend-received deduction*) and there is an ownership period of minimum 1 year. The exemption only counts for small and medium-sized enterprises. The exempted amount is the capital gain deducted with the sales costs. Large companies pay a tax of 0,412% under these conditions.
- 25,75%: when the subsidiary is subject to corporate tax or a similar income tax but there is no ownership period of 1 year;
- 33,99%: when the subsidiary is not subject to corporate tax or a similar tax rate.

#### 4.2.2.4. DIVIDENDS, INTERESTS AND ROYALTIES PAID TO NON-RESIDENT SHAREHOLDERS

##### General:

→ *The general withholding tax rose from 27% to **30%** as from January 1th 2017!*

- The domestic withholding tax on dividends, interests and royalties is 30%;
- The applicable withholding tax on distributions to non-residents is dependent from the tax treaty between Belgium and the other country;
- The parent – subsidiary directive and the interest/royalty directive are applicable in Belgium;
- Dividends also cover liquidation bonuses. Liquidation bonuses are the liquidation proceeds exceeding the share capital and are taxed at 30%.

##### Distributions to individual shareholders:

- Dividends: the withholding tax is limited by the tax treaties: to most countries 15% (some countries: 10% or 20%);
- Interests: the withholding tax is limited by the tax treaties: to most countries 10% (rates vary between 0% and 30%);
- Royalties: the withholding tax is limited by the tax treaties (rates vary between 0% and 30%).

##### Distributions to corporate shareholders:

- Dividends: the parent-subsidiary directive is applicable in Belgium. Following this directive no withholding tax will be levied on dividends distributed to a parent company that is resident of the EU, has held at least 10% of the capital of the subsidiary continuously for at least 1 year and meets the subject-to-tax requirement. This is extended to companies resident in a country that has concluded a tax treaty with Belgium and provides in the exchange of information. Other exemptions or reductions may apply (e.g. tax treaties), otherwise the 30%-rate applies;
- Interests and royalties: 0% when paid to associated, qualifying EU companies (interest/royalty directive). Qualifying companies are subject to corporate tax in the EU, tax resident in an EU member state and of a type listed in the annex to the Directive. Other exemptions or reductions may apply (e.g. tax treaties), otherwise the 30%-rate applies.

#### **4.2.2.5. DEDUCTION OF INTRAGROUP INTERESTS**

Interests paid to group members are 100% deductible. There are a few exceptions on the 100% deductibility (see 4.2.2.2. Anti-avoidance legislation):

- Interests paid to tax havens;
- Thin cap rule: interests paid on loans that exceed the debt-to-equity ratio of 5:1;
- Transfer pricing: interest rates on intercompany loans not meeting the "at arm's-length principle";
- Individual shareholder loans exceeding equity/debts 1:1.

#### **4.2.2.6. PERMANENT ESTABLISHMENT**

A Belgian permanent establishment must keep financial records in conformity with the Belgian minimum standards. The rules relating to the existence of a permanent establishment in Belgium follow the OECD Model Tax Convention but are somewhat stricter.

The taxable income of a permanent establishment includes all profits made through this Belgian establishment. The tax rate is the same as for residents.

#### **4.2.2.7. TAX TREATIES**

A double taxation treaty is a convention between two countries that aim to eliminate the double taxation of income.

Belgium has a broad network of tax treaties with different countries (e.g. Germany, Spain, Poland, Hong Kong, China, ...). Most of those treaties follow the OECD model treaty. Belgium generally uses the exemption-with-progression method to avoid double taxation.

Vandelanotte can help you with treaty analysis and international tax planning.

### 4.3. PERSONAL INCOME TAX

#### Who is liable to Belgian personal income tax?

Personal income tax applies to physical persons, both residents and non-residents. The personal income tax is an annual tax.

A resident is a person whose domicile or seat of fortune (centre of economic interest) is located in Belgium. The domicile or the place of residence is generally defined as the place where an individual has its permanent home. The centre of economic interest is the place from which the domestic affairs are managed (including its capital and having). A resident is subject to tax on its worldwide income, this is the earned income, the income from real estate, the income from movable property and the miscellaneous income.

A non-resident has his domicile or seat of fortune outside Belgium. A non-resident is subject to tax on the income he earns in Belgium or derived from Belgian sources.

There are two legal presumptions with respect to Belgian tax residence. The first presumption is refutable and implies that a registration in the population register is considered to be a Belgian tax-resident. It is possible to prove that the actual tax residence is located outside Belgium. The second presumption is irrefutable and implies that the place of residence is the place where the family, the spouse and the children are located.

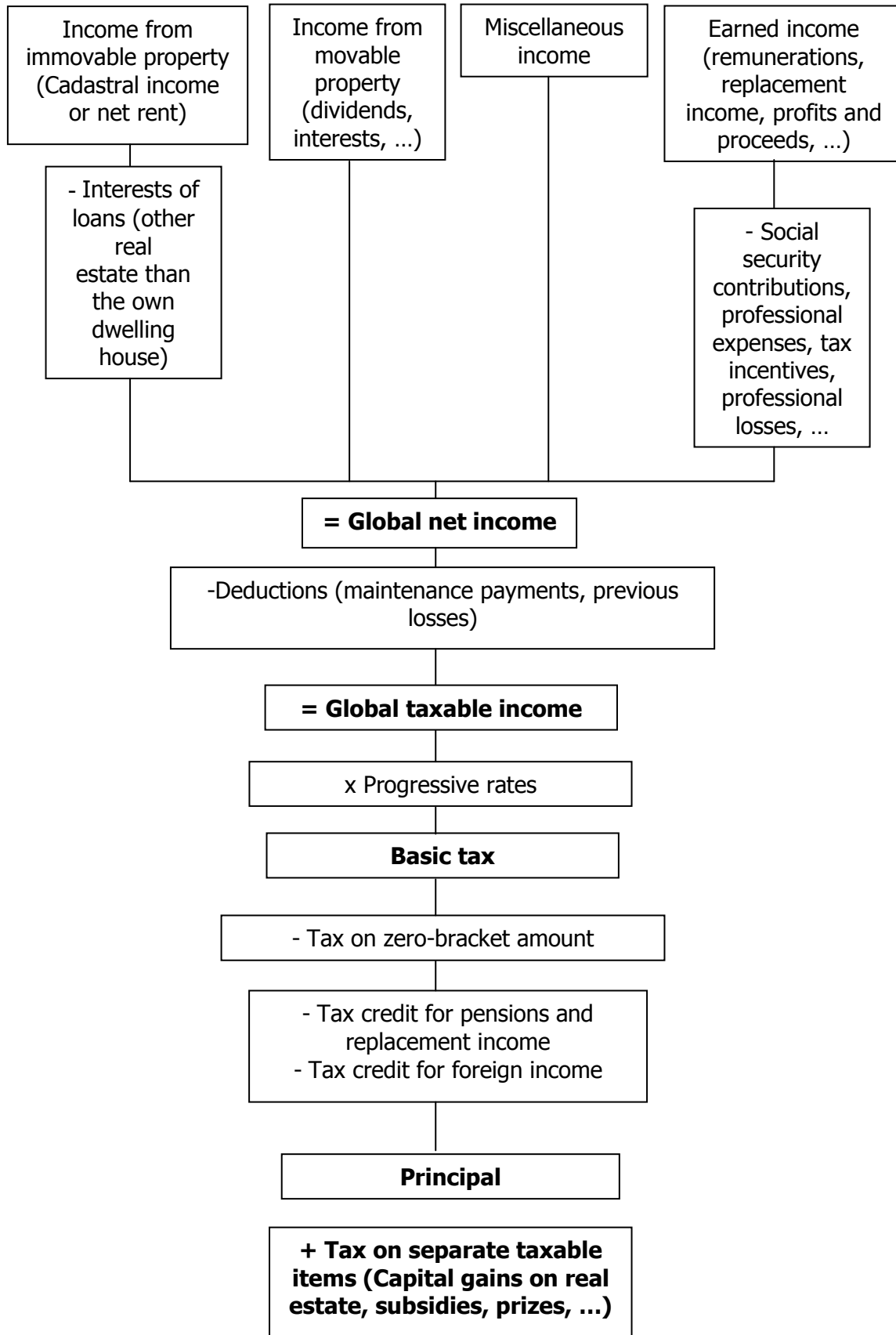
#### Sources of income

There are four categories of the personal income tax:

- Earned income
- Income from real estate
- Income from movable property
- Miscellaneous income

For each of these categories there are specific rules for calculating the net taxable income.

**Diagram of the personal income tax**



<b>State tax</b> (principal + tax on separate taxable items)	<b>Regional surcharges on State tax</b>
- other federal tax credits	+ regional tax increases
	- regional lump sum tax reductions
	- regional tax credits
<b>= federal PIT</b>	<b>= regional PIT</b>
<b>= total amount</b>	
+ federal increases	
- non-refundable federal items which can be set off	
- refundable federal and regional tax credits	
- federal items which can be set off and refunded	
+ municipal surcharges and agglomeration tax on the "total amount"	
<b>= amount to be paid or refunded</b>	

### Earned income

Earned income includes employee salaries, wages, replacement income, earnings from a liberal profession, company's director fees and business income (profits) and pensions.

Salaries, wages and replacement income are taxable at the time they are paid or attributed. Profits are taxable when they accrue. The earned income is taxed at progressive rates, but in some cases earned income is taxed at flat rates, for example pension capital sums.

The employees salaries and wages are liable to tax on the gross amount minus personal social security contributions. Also for director fees, the social security contributions can be deducted from the gross amount. In addition, there is a deduction of actual or lump-sum expenses on earned income. The taxpayer will opt for the actual expenses when this results in a larger total deduction.

### ***Earned income taxed at flat rates***

<b>Type of income</b>	<b>Tax rate</b>
Salary arrears, replacement income arrears	Previous year's average rate
Gross termination compensation	
Redeployment allowances	
Prepaid holiday	
Arrears of maintenance payments	
Free arrears	
Capital gains from professional activities	16,5%
Young sportsmen's remuneration (income < 18.890 euro, tax year 2017)	16,5%
Volunteer sporting activity as a self-employed secondary activity (income < 18.890 euro, tax year 2017)	33%



### Income from real estate

To determine the taxable income, the deemed rental income (cadastral income) is used. The cadastral income is the normal average annual net income of a property on 1 January 1975. It is assessed by the Belgian tax authorities. The cadastral income on 1 January 1975 is multiplied by a revaluation index, in order to obtain an up-to-date basis for calculating the tax.

The taxable regime of real estate is dependent on the usage of the property.

- Belgian real estate not rented out or rented to physical persons and to legal persons other than companies is taxed on the revalued cadastral income (increased by 40% for buildings).
- Belgian real estate rented to a company (or to an individual for professional usage) is taxed on the 'net rental', this is the gross rent less a flat-rate cost deduction of 40% (buildings) or 10% (land). The expenses may not exceed two-thirds of the (non-indexed) cadastral income.
- The taxable income of real estate abroad is the net rental. This is the gross rental less 40% (for buildings) or less 10% (for lands) for standard expenses.

For real estate abroad, there is a distinction between 'countries with treaty' and 'countries without treaty'.

The income from real estate situated in a country with treaty will be exempted with reservation of progression method. If the real estate is situated in a country without treaty, there is also an exemption with reservation of progression method, but only for the half of the amount.

Interest on loans to acquire or retain real estate is deductible from the income from real estate of the borrower. (Other real estate than the own dwelling house.)

#### *Abolition of the standard interest deduction (as from tax year 2015)*

The deduction of interests concerning the own dwelling house from real estate income has been abolished since tax year 2015. The Regions are now exclusively competent for the tax advantages relating to the own dwelling house. The standard interest deduction has been converted into a regional tax credit for interests from debts incurred before 1 January 2015.

#### *Real estate withholding tax*

There is a (final) annual real estate withholding tax. The tax is a final tax because it is not deductible from the personal income tax. The two taxes are totally independent. It is determined as a percentage of the fictitiously estimated rental income of the property. The percentage is 2,5% for the Flemish region and 1,25% for the Walloon region. Tax reductions are possible under certain conditions such as resident children.

### Income from movable property

Income from movable property is taxed at flat rates. This income can be taxed at normal progressive rates if this is to the advantage of the taxpayer. The withholding tax will be credited or reimbursed against the final tax, calculated at normal progressive rates.

In general, a withholding tax of 30% applies to income from capital and movable property. Interest from ordinary saving accounts exceeding the exempted amount of 1.880 euro (tax year 2017), some other specific types of income and economic rights of an author are taxed at a percentage of 15% withholding tax.

### *Dividends of shares of SME's*

A reduced withholding tax applies to dividends allocated by SME's (as defined in article 15 of the Corporation Code) to new registered shares issued upon cash contributions carried out as from 1 July 2013. The withholding tax is equal to:

- 20% for dividends allocated or assigned on the occasion of the profit distribution relating to the second accounting year following that in which the injection occurred;
- 15% for dividends allocated or assigned on the occasion of the profit distribution relating to the third accounting year following that in which the injection occurred, and of the following profit distributions.

### *Liquidation reserve*

A special tax system of liquidation surpluses has been introduced for SME's. As from tax year 2015, SME's have the possibility to use totally or partially their accounting profit after tax to build up a "liquidation reserve". This reserve must be recorded and held continuously in one or several separate liabilities accounts (it may not be used as basis for any remuneration or allocation). It is liable to a separate tax of 10% when it is built up.

No withholding tax will be due on the part of this reserve held until the liquidation of the company. If dividends are distributed via a withdrawal from this reserve, before the liquidation of the company, the dividends are subject to the withholding tax on income from movable property at the following reduced rates:

- 17% if the distribution occurs during the first five years (*20% for liquidation reserves built up as from tax year 2018*);
- 5% if the distribution occurs later.

### Miscellaneous income

Miscellaneous income is generally taxed separately at fixed rates, although this income can be taxed at normal progressive rates, if this is to the advantage of the taxpayer. In general, miscellaneous income is income from unusual or occasional activities.

- Capital gains on personal real estate are exempted from taxes, unless they are realized on a regular base. The transfer of buildings within 5 years following the acquisition is taxed at a percentage of 16,5%. The transfer of lands within 5 years after the acquisition is taxable at a percentage of 33% and at a percentage of 16,5% in case of a sale within 8 years;
- Prizes, subsidies, awards,... are taxable at a percentage of 16,5%;
- Maintenance payments are taxable at progressive rates and only 80% of the payments are taxable for the recipient;
- Capital gains realised on the transfer of shares are generally exempted in the personal income tax. There are two exceptions:
  - The capital gain is taxable when a major shareholding (more than 25%) is transferred within 5 years after the acquisition to a company not located in the European Economic Area. The tax rate is 16,5%;
  - The capital gain is taxable when the whole transaction is qualified as speculative. This means that the transfer of shares does not fit in the normal management of private assets. The tax rate is 33%.

Type of income	Tax rates
Capital gains on personal real estate (buildings)	16,5% (< 5 years)
Capital gains on personal real estate (lands)	33% (< 5 years) / 16,5% (> 5 years and < 8 years)
Prizes	16,5%
Subsidies	16,5%
Maintenance payments	Progressive rates (only 80% of the income is taxable)
Capital gains on shares (major shareholdings)	16,5%
Capital gains on shares (speculative)	33%
Occasional profits and proceeds	33%
Allowances for research workers	33%
Sublease or transfer of lease	25%
Permission to place mobile phone masts	25%
Sporting rights (fishing, shooting, ...)	25%

**"Internal" capital gains: (New from January 1th 2017!)**

→ If capital gains on shares, realized at the contribution into a company, are not taxed as miscellaneous income, the paid-up capital (for tax purposes) of the receiving company equals the acquisition value of the contributed shares for the contributor. So any repayment of excess capital will be considered a dividend, subject to a withholding tax of (in principle) 30%.

**Deductions**

A taxpayer can benefit some deductions:

- The maintenance allowances (80% of the sums paid is deductible from the net taxable income, certain conditions will have to be met);
- The losses incurred in a previous or current tax year.

**Tax rates**

The Belgian personal income tax rates are progressive. Several types of income are taxed separately.

The rates for income year 2017, tax year 2018 are:

Taxable income (euro)	Personal income tax rate
0 – 11.070,00	25%
11.070,00 – 12.720,00	30%
12.720,00 – 21.190,00	40%
21.190,00 – 38.830,00	45%
Above 38.830,00	50%

Local and regional surtax must be added to these amounts. This is a percentage of the state personal income tax due.

### Zero-bracket amount

In the personal income tax a certain amount is exempt from tax. This amount is called the basic zero-bracket amount. The basic zero-bracket amount is 7.270 euro for tax year 2018. If the taxable income is less than 27.030 euro, the basic zero-bracket amount is 7.570 euro.

The zero-bracket amount can be increased dependent on the personal status of the taxpayer. For example, the number of children.

Personal allowances tax year 2018:

Basic personal allowances	7.270 euro – 7.570 euro
Personal allowances 1 child	1.550 euro
Personal allowances 2 children	3.980 euro
Personal allowances 3 children	8.920 euro
Personal allowances 4 children	14.420 euro
For every extra child	5.510 euro
Extra allowance per child less than 3 years old	580 euro

### Tax reductions

Expenses	Rate of the tax reduction (tax year 2017)
<i>Long-term savings</i>	
Individual life insurance premiums and mortgage capital repayments	30% (max. 687 euro)
Personal premiums for group insurance contracts and pension funds	30% (max. 687 euro)
Pension savings	30% (max. 940 euro)
<i>Real estate</i>	
Expenses for another dwelling than the own dwelling house: Federal tax credit for long-term savings (individual life insurance premiums + capital repayments)	30%
Expenses for acquiring or maintaining the own dwelling house: regional tax credit (housing bonus) <b>or</b> regional tax credit for long-term savings (loans which are not meeting the conditions for the housing bonus)	Marginal rate (min. 30%) <b>or</b> 30%
Federal tax credits (for another dwelling than the own dwelling house) –	Marginal rate

loans contracted until 31 December 2013 <i>(transitional provision)</i>	
Regional tax credit for standard interest, additional interest, "housing-savings", interest relating to the conversion of the old creditable withholding tax on real estate <i>(transitional provision)</i>	Marginal rate
Renovation in 'zones of positive metropolitan policy'	15% (max. 760 euro)
Making dwellings secure against burglary and fire	30% (max. 760 euro)
Renovation of low-rent dwelling houses	5% (max. 1.150 euro)
<i>Environment</i>	
Roof insulation	30% (max. 3.130 euro)
"Low energy house"	Fixed at 450 euro
"Zero energy house"	Fixed at 1.810 euro
Interest of "green" loans	30%
Other electric vehicles than private cars	15% (four wheels: max. 4.940 euro / otherwise: max. 3.010 euro)
<i>Other expenses</i>	
Gifts (min. 40 euro)	45% (max. 376.350 euro)
LEA vouchers and service vouchers	30% (max. 420 euro)
Shares of recognized development funds	5% (max. 320 euro)
Expenses for child care (max. 11,20 euro / day / child)	45%

### **Tax year and tax return**

The income year is the calendar year in which a taxpayer receives the income, the tax year is the year following on this calendar year.

The filing date is around June 30 for resident taxpayers. The filing date for non-residents is during the last quarter of the year following the income year.

Spouses and legal cohabitants must submit one return, but the incomes are taxed separately. Separate returns are applicable in some cases, for example in the year of marriage or the year in which the legal cohabitation is registered.

Vandelanotte can help you complete and file the annual tax return.

#### 4.4. VALUE ADDED TAX (VAT)

Value Added Tax (VAT) is a tax on goods and services provided by a business. It is a consumption tax. The tax is due on the added value.

VAT is charged at each stage of the production chain and in the distribution of goods and services. The company who charges the VAT is required to pay the VAT amount to the tax authorities.

Basically, the VAT paid on purchases can be deducted from or set off against the VAT due. Only the balance of VAT due must be paid to the tax authorities. If there is a balance of deductible VAT, the amount can be recovered from the tax authorities. The real VAT cost is borne by the final consumer.

The legal basis is the Belgian VAT Code, which is based on the EU directive 2006/112/EC.

##### Who?

A taxable person is anyone who, in the performance of an economic activity, carries out, in a regular and independent manner, whether on a principal or accessory basis, with or without profit motive, the supply of goods or services referred to in the VAT code, irrespective of the place where that activity is carried out.

##### Tax rate

The rate depends on the nature of the transaction. The scheme below shows the different applicable rates:

	VAT rate	Applies to	Examples
<b>Standard rate</b>	21%	All goods and services not eligible for one of the reduced rates.	New cars, cosmetics, ...
<b>Reduced rates</b>	12%	Certain goods or services which are economically or socially important.	Margarine, pay television, social housing, certain solid fuels (e.g. coals), restaurant and catering services (excluding drinks served), ...
	6%	Particularly for commodities and services with social character.	Food, construction, living animals, passenger transport, pharmaceutical products and medical equipment, water supply, ...
<b>Zero rate</b>	0%		Newspapers, magazines published at least 48 times a year, ... Goods for recycling

##### Taxable transactions

The Belgian VAT Code describes four taxable transactions: supply of goods, supply of services, import of goods and intra-community acquisitions of goods.

## Exemptions

There are two kinds of exemptions. The first group of exemptions reserves the right to deduct VAT on purchases. These are the exemptions of art. 39 to 42 VAT code. The exemptions of the other group are included in art. 44 of the VAT code and no VAT deduction is allowed.

### *Exemptions of art. 39 to 42 VAT code*

These are exemptions in the framework of international transactions such as export, import, intra-community supplies and acquisitions, international transport,....

A person establishing an exempted activity of art. 39 to 42 of the VAT code can deduct the VAT paid to its suppliers.

### *Exemptions of art. 44 VAT code*

- Certain activities with a cultural or social nature. Examples are doctors and educational institutions;
- The rental of real estate;
- Banking transactions and financial services;
- Insurance services;
- ...

A person establishing an exempted activity of art. 44 of the VAT code can not deduct the VAT he paid to its suppliers.

## The taxable amount

The taxable amount includes the value of everything obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply. This amount also includes the commission, insurance and transportation costs, taxes (except VAT), duties and levies.

## Limitation to VAT deduction

The VAT deduction on business assets partly used for private purposes is limited to the actual professional use.

In addition, limitation to VAT deduction applies to different expenses made by the company:

Expenses	VAT deductible
<b>Gifts</b>	0 %
<b>Reception costs</b>	0 %
<b>Passenger car costs</b>	Actual professional use with a maximum of 50%
<b>Restaurant costs</b>	0 %
<b>Hotel costs</b>	0 %

## Obligations

### *Registration*

Anyone who is liable to pay Belgian VAT and any taxable person established in Belgium must register for VAT purposes and file for a VAT identification number.

Taxable persons established in another EU Member State can choose to register for VAT either directly or by appointing a VAT representative. Other taxable persons (not established in an EU Member State) don't have the choice, they have to register by appointing a VAT representative.

A Belgian VAT number is assigned to each VAT payer. A Belgian VAT number is composed of the letters BE followed by a ten-digit number, BE 0123.456.789. This number must be written in all contracts, invoices, order forms, etc.

Vandelanotte can help you with the procedure to identify for VAT purposes.

### *Invoicing*

In general, a taxable person must issue invoices. Some are excluded from the obligation. Paper and (under certain conditions) electronic invoices are possible.

### *VAT-Bookkeeping*

The taxable person is required to keep accounts adapted to the size of his activities in order to enable the application and supervision of the Belgian VAT.

There are different books which have to be kept (on paper or electronically):

- A purchase journal, this is a book listing all the purchase invoices;
- A sales journal, this is a book listing all sales invoices;
- A financial journal
- A book of daily receipts;
- A list of fixed assets and a number of special accounts;
- Certain registers.

### *VAT returns*

There are monthly and quarterly VAT returns. In principle, the taxable persons must file a monthly return. A quarterly return is allowed when the annual turnover doesn't exceed 2.500.000 EUR. The returns must be filed with the VAT authorities by the 20<sup>th</sup> of the month following the period to which it relates. The payment of VAT to the Belgian authorities must be done within the same period as the VAT-return. The VAT payments can be made from a foreign bank account.

In the case of quarterly returns, it is possible that the tax payer must make prepayments. A prepayment amounts one third of the tax payable in the previous quarter. These prepayments must be made by the 20<sup>th</sup> of the second and the third month of the calendar quarter.

### *Annual sales listing*

Taxable persons must file an annual listing for services to its Belgian registered VAT customers. The annual sales listing must be filed by 31 March of each year.

### *European sales listing*

The European Sales listing contains the Intra-community supplies exempt from VAT. There are three categories: intra-community supply of services, intra-community supplies of goods and intra-community supplies of goods in the framework of triangulation.



The European sales listing must be filed by the 20th of the month following the reporting period. Taxable persons with monthly returns must also file the European sales listing on a monthly basis. The taxable persons with quarterly returns, should file the European sales listing quarterly.

### *Intrastat*

In the monthly intrastat declaration companies provide information about their Intra-community (intra-EU) flows of goods. The intrastat declaration must be filed the 20<sup>th</sup> of the month following the month to which it relates.

Vandelanotte can help you meet all these obligations.

### **Permanent establishment**

A permanent establishment is subject to the same VAT obligations as a Belgian resident entrepreneur.

In the case in which a foreign entrepreneur doesn't have a permanent establishment in Belgium, different rules apply. Generally, a foreign entrepreneur should only register for Belgian VAT purposes if he performs taxable activities for which he is liable to pay Belgian VAT, e.g. import of goods.

When a foreign company supplies a good or a service in Belgium, to a taxable person, the VAT is generally due by the customer. (under certain other conditions) Following this general rule, the foreign company does not need to register for Belgian VAT purposes when he performs taxable activities in Belgium.

### **Special system for small enterprises**

A tax exemption applies for the supply of goods and services by enterprises whose annual turnover does not exceed 25.000 euro excl. VAT. On the other hand, they are not entitled to deduct the VAT on their purchases. This exemption system does neither apply to certain immovable transactions, nor to certain transactions with new means of transport. Under certain conditions, these enterprises can be subjected to the normal VAT system.

→ *The maximum turnover for small enterprises rose from 15.000 to 25.000 euro as from January 1th 2016!*

## **4.5. REGISTRATION DUTIES**

### **General**

Registration duties are a tax on the registration of deeds or documents. The regions are responsible for the registration duties.

Examples of deeds and documents that must be recorded are notarial deeds, deeds relating to real estate situated in Belgium, the decisions and judgements of a Belgian courts or tribunals, ...

Some examples of different types of registration duties are registration of the establishment of a mortgage, of the sale of real estate, of the rental of real estate, of gifts, of matrimonial contracts and court decisions, of the division of real estate,...

The evidence of registration is a reference made by the administration on the deed or the document.

## Sale/division of real estate

Registration duties need to be paid on the sale and the division of real estate. The standard rates on the sale of real estate are:

<b>Flemish region</b>	<b>10 %</b>
<b>Brussels region</b>	<b>12,5 %</b>
<b>Walloon region</b>	<b>12,5 %</b>

Reductions are possible under certain conditions such as the sale to real estate dealers or the sale of a modest house (house or apartment for the accommodation of a family or one person).

The standard rates for a division of real estate are:

<b>Flemish region</b>	<b>2,5 %</b>
<b>Brussels region</b>	<b>1 %</b>
<b>Walloon region</b>	<b>1 %</b>

## Donations

A donation of real estate has to be made official by a notarial deed and so is automatically subject to gift duties.

A donation of movable property should not always be registered. An example is a transfer from hand to hand. When this transaction is not registered, there is no registration duty due but this means that the donor must survive for at least three years after the day of the gift, otherwise inheritance tax is due.

The gift duties depend on:

- The value of the goods;
- The degree of the relationship between the donor and the beneficiary.

	<b>Flemish region</b>	<b>Brussels region</b>	<b>Walloon region</b>
<b><i>Movable property (specific conditions apply for some regions)</i></b>			
<b>Between lineal relatives, between spouses and between legal cohabitants</b>	3%	3%	3,3%
<b>Between brothers and sisters and uncles or aunts and nephews or nieces</b>	7%	7%	5,5%
<b>Between all other persons</b>	7%	7%	7,7%
<b><i>Immovable property and non-qualifying movable property</i></b>			
<b>Between lineal relatives, between spouses and between legal cohabitants</b>	3% - 27%	3% - 30%	3% - 30%
<b>Between brothers and sisters</b>	10% - 40%	20% - 65%	20% - 65%
<b>Between uncles or aunts and nephews or nieces</b>	10% - 40%	35% - 70%	25% - 70%
<b>Between all other persons</b>	10% - 40%	40% - 80%	30% - 80%

The gift duties for immovable property in the Flemish region could be reduced when an energy-saving investment is carried out within five years after the gift.

### Transfer of family businesses and companies

Under certain specific conditions, a family business or company can be transferred exempt from gift duties. The rules concerning the transfer of a family business differ depending on the region where the person is domiciled. The rates are also different:

<b>Flemish region</b>	<b>0 %</b>
<b>Brussels region</b>	<b>0 %</b>
<b>Walloon region</b>	<b>0 %</b>

Vandelanotte can help you optimize the transfer of your property or business to the next generation or to other people by donations or by the transfer of a family business.

## 4.6. INHERITANCE TAX

### General

The inheritance tax is a tax paid by a person who inherits assets (money, property, ...) of a deceased person. Inheritance tax is due on the value of the entire estate of a deceased person who was domiciled in Belgium. If the deceased person wasn't domiciled in Belgium at the time of death, the transfer duty upon death still applies to real estate situated in Belgium.

All the heirs must file together an inheritance tax return. Contents of the inheritance tax return are the identification of the deceased, the declarants, a statement of assets and liabilities,... The inheritance tax return is the basis for the calculation of the inheritance tax.

### Rates per region

The amount paid as inheritance tax depends on:

- The value of the estate;
- The degree of the relationship between the heirs and the deceased;
- The region where the deceased had his fiscal domicile at the time of death.

Each region has its own rates, reductions and specific rules for calculating the taxable base.

The rates applicable in the different regions are:

	<b>Flemish region</b>	<b>Brussels region</b>	<b>Walloon region</b>
<b>Between lineal relatives, between spouses and between legal cohabitants</b>	3% - 27%	3% - 30%	3% - 30%
<b>Between brothers and sisters</b>	30% - 65%	20% - 65%	30% - 65%
<b>Between uncles or aunts and nephews or nieces</b>	45% - 65%	35% - 70%	25% - 70%
<b>Between all other persons</b>	45% - 65%	40% - 80%	30% - 80%

Vandelanotte can help you minimize the inheritance tax due.

#### **4.7. CUSTOMS DUTY**

Belgium is part of the European customs union and applies the European customs tariffs and regulations. These procedures are based on the Community Customs Code and on the decrees issued for its implementation. Goods entering the European Union in Belgium are in principle taxed with customs duties. The tariffs are based on the nature of the goods and the country from which they have been imported. The tax base generally is the customs value and sometimes the quantity.

Vandelanotte can help you with all the formalities concerning customs duties.

#### **4.8. EXCISE DUTY**

Belgium applies the European excise duty tariffs and regulations. Excise duties are levied on alcoholic drinks, tobacco products and mineral oils. In addition, in Belgium excise duties are also levied on coffee and non-alcoholic drinks.

Vandelanotte can help you with all the formalities concerning excise duties.

#### **4.9. OTHER TAXES**

Belgium knows a few other taxes such as a tax on stock-exchange and carry-over transactions, annual tax on insurance transactions, annual tax on profit-sharing schemes, tax on long-term savings and a bill-posting tax.

Vandelanotte can answer your questions concerning the different applicable taxes.

## 5. EMPLOYMENT AND SOCIAL SECURITY

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### 5.1. LABOUR LAW

Employment is a very regulated issue in Belgium. Specific work rules, set up by joint committees composed of both employers and workers/employees, apply in the different sectors. Work conditions and minimum wages are strictly determined.

In Belgium there is a difference between white collar employees and blue collar workers. In what follows a few important rules for employees are discussed.

#### Agreement

When both parties agree to work together for an indefinite time or did not agree on a particular time, the agreement is to be assumed an agreement of indefinite term. In principle, the agreement doesn't have to be in writing. A written labour agreement for an indefinite time is only compulsory for specific clauses but is highly recommended and customary. It insures the employer that there are no ambiguities and no grounds for disputes.

A fixed term contract and a part-time contract should always be in writing. A labour agreement for a fixed term is an agreement where both parties agree to work together starting from a particular day for a fixed term in time. (For example : one month) There can only be maximum four agreements with each a minimum term of three months in a period of two years.

#### Labour time

The number of working hours for a full-time employment is established at 38 hours per week (effective hours per week or 38 hours on average over a specified reference period). When the employees effective work for 39 or 40 hours a week, there must be allocated 6 or 12 compensatory days of rest over a one-year reference period.

Concerning the above normal limits of working time are there some derogations: derogation directly permitted by law without prior authorisations (p.ex. work organised in successive shifts (max.: 11 hours/day and 50 hours/week) or derogation acquired by royal decree.

The maximum daily time is 8 hours per day. In certain cases it is possible to increase the daily working time to 9 hours per day ( if the worker does not work more than 5½ days a week (work schedule in which the worker, in addition to his weekly day of rest, has at least half a day's rest) or to 10 hours per day ( if the worker is absent from home for more than 14 hours a day because of the distance between the workplace and their place of residence or stay).

#### Legal holiday

In Belgium there are ten public holidays. The specific dates for 2017 are:

New Year	Sunday, January 1 <sup>st</sup>
Easter Monday	Monday after Easter (Monday, April 17, 2017)
Labour Day	Monday, May 1 <sup>st</sup> , 2017
Ascension	39 days after Easter (Thursday, May 25, 2017)
Pentecost Monday	Monday, June 5, 2017
Belgian National Holiday	Friday, July 21, 2017
Assumption	Tuesday, August 15, 2017
All Saints `day	Wednesday, November 1 <sup>st</sup> , 2017
Armistice day	Saturday, November 11, 2017
Christmas	Monday, December 25, 2017

## **Leave**

The right to the number of vacation days is determined in function of the work performed in the previous year. The minimum statutory annual vacation period is 20 days per year, based on a full-time employment (38h/week) during the previous year. Additional vacation days can be granted but this is not customary.

In Belgium there are great number of different vacation configurations, amongst which time-off for maternity leave, time-off for urgent reasons, short leave of absence, adoption leave, paid educational time-off, and time credit or career interruption. In case of urgent reasons: illness, an accident or hospitalization of a nearby family member, an employee has the right to take family leave. This family leave can be allowed for maximum 10 days per year. The employee does not receive any wages.

## **Wages**

In Belgium, wages and salaries paid out as remuneration to blue-collar workers and white-collar workers by the employer need to be at least equal to the minimum that has been established in the collective labor agreements on the sector level (joint committee).

Blue-collar workers are paid by the hour, white-collar employees are paid per month.

The different collective labor agreements (CAO) set minimum wages and wage levels in many industries. These agreements are often extended to other benefits for workers such as holiday bonuses and healthcare.

## **End of year bonus**

In most sectors or companies there is a right to a end of year bonus. The end of year bonus is in the most cases equal to the gross wage of the last month of the year.

## **Vacation pay**

The amount of vacation pay depends on whether it is a blue-collar worker or a white-collar employee.

Vacation pay to blue-collar workers is paid by the National Annual Vacation Service (RJV) or a vacation fund. This amount is derived from the social security contributions that are being paid on the wages by the employer.

The vacation pay to white-collar employees is paid directly by the employer. It consists of single vacation pay and the double vacation pay. The single vacation pay is the normal salary that is paid when an employee takes his days of vacation. The double vacation pay for a full-time work performance is equal to 92% of the gross monthly salary.

The double vacation pay is normally paid in the month in which the employee takes his main vacation of the year (normally June or July).

Early vacation pay (departure pay) needs to be paid when a white-collar employee leaves his employer or reduces his employment fraction.

## **Benefits**

### *Meal vouchers*

For every day which the employee effectively performs work activities, can a meal voucher be given. The right to meal voucher needs to be embodied in a collective labor agreement or by an individual agreement. An employer cannot contribute more than 6,91 euro per voucher.

### *Group insurance*

In some sectors employers are obliged to have a group insurance. The group insurance is known as an interesting alternative pay, whereby employees build up pension savings.

These contributions are 100% tax deductible for the employer and tax exempt for the employee. In addition, lower patronal social contributions have to be paid (8.86%) as well as 4.4% taxes.

The employee has to pay social contributions between 0 and 2% and taxes of 10% with withdrawal of the funds when retiring.

### *Car*

As an employer you can provide your employees with a company car. This means that the employee can use this car for all movements, both regarding his professional as well as private life.

The employee himself also needs to pay an amount 'benefits in kind' for the private use of the company car. These are calculated on the basis of the age of the car, the CO<sub>2</sub>-emissions and the catalogue price of the car.

### *Hospitalization insurance*

A hospitalization insurance is an interesting alternative pay for the employee that is used regularly for white-collar employees. In some sectors it is obliged. Often the hospitalization insurance is entirely free for the employee and for a little cost also accessible for their family.

The company can have a collective hospitalization insurance to lower the costs. The contributions for this insurance paid by the employer are free from social contributions for both the employer as the employee since it's not seen as pay. The contributions for the insurance are also free from taxes.

### *Occupational expenses*

The employer can grant a package of occupational expenses for costs that the employee has to make during working activities (parking costs, lunch costs, etc.).

These occupational expenses are not considered to be wage, since they are meant to pay back the expected expenses made by the employee. The employer and employee don't have to pay social contributions or taxes on this amount.

## **Illness**

When an employee becomes sick or becomes the victim of an accident (excluding an occupational accident), his normal salary has to be paid by the employer during the initial period:

Blue-collar worker :

<b>Period</b>	<b>Part of the normal salary</b>	
	<b>To be paid by the employer</b>	<b>To be paid by the health insurance</b>
1 <sup>st</sup> – 7 <sup>th</sup> day	100%	
8 <sup>th</sup> – 14 <sup>th</sup> day	85,88%	
15 <sup>th</sup> – 30 <sup>th</sup> day	25,88% from the part of the salary that does not crosses the limit of the Z.I.V.  85,88% from the part of the salary that crosses the limit of	60% (limited to the amount of the Z.I.V.)

	the Z.I.V.	
31th day- ....		60% (limited to the amount of the Z.I.V.)

White-collar employee :

Period	Part of the normal salary	
	To be paid by the employer	To be paid by the health insurance
1 <sup>st</sup> – 30th day	100%	
31th day- ....		60% (limited to the amount of the Z.I.V.)

### Termination of the contract

The first way to terminate a labor agreement is by mutual agreement. Both employee and employer agree the termination of the employment agreement.

In the case of an employment of indefinite term, either party can prematurely terminate the agreement by giving notice of cancellation. During the term of cancellation, the employee remains in the employ of the employer and continues to receive his salary accordingly. At the end of the term of cancellation, the employment agreement is effectively terminated.

There are certain minimum conditions that need to be fulfilled for the term of notice of cancellation. When certain fixed formalities are ignored in the process, the notice of cancellation becomes null and void.

The length of the term of cancellation will vary, depending on whether it is for a white-collar employee or a blue-collar worker.

Starting from 01/01/2014 all new contracts follow the new terms for the period of notice, due to the Blue and white collar worker harmonization.

Termination by employer:

<b>&lt;3 months</b>	2 weeks	<b>7 y</b>	24 w	<b>20 y</b>	62 w	<b>33 y</b>	75 w
<b>3 &lt; 6 months</b>	4 weeks	<b>8 y</b>	27 w	<b>21 y</b>	63 w	<b>34 y</b>	76 w
<b>6 &lt; 9 months</b>	6 weeks	<b>9 y</b>	30 w	<b>22 y</b>	64 w	<b>35 y</b>	77 w
<b>9 &lt; 12 months</b>	7 weeks	<b>10 y</b>	33 w	<b>23 y</b>	65 w	<b>36 y</b>	78 w
<b>12 &lt; 15 months</b>	8 weeks	<b>11 y</b>	36 w	<b>24 y</b>	66 w	<b>37 y</b>	79 w
<b>15 &lt; 18 months</b>	9 weeks	<b>12 y</b>	39 w	<b>25 y</b>	67 w	<b>38 y</b>	80 w
<b>18 &lt; 21 months</b>	10 weeks	<b>13 y</b>	42 w	<b>26 y</b>	68 w	<b>39 y</b>	81 w
<b>21 &lt; 24 months</b>	11 weeks	<b>14 y</b>	45 w	<b>27 y</b>	69 w	<b>40 y</b>	82 w
<b>Above 2 years</b>	12 weeks	<b>15 y</b>	48 w	<b>28 y</b>	70 w	<b>41 y</b>	83 w
<b>3 years</b>	13 weeks	<b>16 y</b>	51 w	<b>29 y</b>	71 w	<b>42 y</b>	84 w
<b>4 years</b>	15 weeks	<b>17 y</b>	54 w	<b>30 y</b>	72 w	<b>43 y</b>	85 w
<b>5 years</b>	18 weeks	<b>18 y</b>	57 w	<b>31 y</b>	73 w	<b>44 y</b>	86 w
<b>6 years</b>	21 weeks	<b>19 y</b>	60 w	<b>32 y</b>	74 w	<b>45 y</b>	87 w

Termination by employee:

<b>&lt;3 months</b>	1 week
<b>3 &lt; 6 months</b>	2 weeks
<b>6 &lt; 12 months</b>	3 weeks
<b>12 &lt; 18 months</b>	4 weeks
<b>18 &lt; 24 months</b>	5 weeks



<b>Above 2 years</b>	6 weeks
<b>4 years</b>	7 weeks
<b>5 years</b>	9 weeks
<b>6 years</b>	10 weeks
<b>7 years</b>	12 weeks
<b>&gt; =8 years</b>	13 weeks

When the employment agreement is broken, there comes immediately an end to the labor agreement and must the party that breaks the employment agreement pay to the other party an indemnity.

In the event of urgent cause, the employment agreement may be terminated without notice period that must be respected or a indemnity that has to be paid. Urgent cause refers to a serious infringement that renders any and all possible collaboration between employee and employer immediately and irrevocably. In this matter there is a strict procedure that needs to be respected.

Contracts of definite term or for defined work activities terminate automatically. No specific formalities are required in the process of termination.

In principle, a contract of definite term or for a defined work performance cannot be terminated unilaterally before the end date of the labor agreement except during the first part of the labor agreement (with a maximum of 6 months); urgent cause or by mutual agreement. When the labor agreement is unilaterally terminated during the second part of the labor agreement a indemnity has to be paid that is equal to the wage for the remaining duration of the contract for definite period. However the indemnity may not be more than the double of the normal notice period that must be paid when it would be a contract for indefinite period.

## **5.2. EMPLOYMENT OBLIGATIONS**

### **Labour accident insurance**

An employer is obligated to close (before the employee enters the company) a labor accident insurance. The labor accident insurance covers accidents that happens during the execution of activities under the employment agreement, it also includes accidents that may occur during the employee's movements between home and the workplace.

### **Standing employment conditions**

Every employer is obligated to provide a copy of the labor regulations to every new employee.

The labor regulations contain the principal rights and obligations of the employees and employer, for example the start and the duration of the working hours, collective vacation days...

### **Enrolling with employment services and social security**

Each employer needs to register with a child allowance fund, occupational health care service and the social security office (ONSS).

### **Liability insurance**

The purpose of the liability insurance is to cover the extra-contractual civil liability of the insured company for damage to third parties as a result of different events that have occurred during the course of the business of the company, whether it happens within the company or outside.

Mostly the material damage, physical damage, intangible damage, and very often pure immaterial damage (which is not the result of guaranteed physical injury or property damage) is insured.

The contribution for a liability insurance is calculated based on the type of activity of the company, the insured amount and scope of the guarantee. Pricing can be based on the number of employees and / or turnover of the company. Usually there is a franchise included in the policy.

## **5.3. SOCIAL SECURITY**

In Belgium you can work as an employee or as a self-employed person. Self-employed persons are working for a company without an authority connection towards the company. Self-employed persons are entitled to organize their work without complying to instructions from the company. Social security contributions are lower for self-employed persons.

Belgium has an extensive social security system which provides cover for medical care, unemployment, pensions, maternity, accidents, workplace injuries as well as hospital pay.

Employers have to register with the National Social Security Office (ONSS) where the social security contributions will be paid.

<b>Employees 2017</b>	<b>Blue Collar</b>	<b>White Collar</b>
	<b>Gross</b> x 1,08	
Contributions by the employee	13,07%	13,07%
Contributions by the employer	±50% Including the annual vacation contribution	±32,50%
The percentages are given as an indication but are depending on the joint industrial committee to which the employer belongs.		
<b>Self-employed (as main occupation)</b>		/quarter
		First Year
0,00	to 13.296,25	€708,35
13.296,25	to 57.415,67	20,5%
57.415,67	to 84.612,53	14,16%
84.612,53	to ...	
		€ 725,62
		21%
		14,16%

Vandelanotte can help you calculate the social security contributions due and optimize your personal situation.

\* \* \*

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