Gateway to Europe

Investments in Belgium

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Quality In Everything We Do

"If you know your counterparts and know yourself, you can win a hundred battles without a single loss.

引自《孙子兵法》"知己知彼，百战不殆。"

Quote from Art of War

Welcome to “Gateway to Europe – Investment in the Belgium”

We have seen European companies investing in China since the late 1980s. When the Chinese government launched their “Going Abroad” policy in 2001, Chinese companies started to look abroad for investments. Belgium is proved to be among the most attractive countries and is considered as a gateway to Europe. Currently important Chinese companies have established their presence in Belgium and the number continues to increase.

In Belgium, we have focussed on investment from China to Belgium with a skilled and multicultural Greater China Business Services team. This team is not a stand-alone team but part of a Greater China Business Services team working hand-in-hand with Ernst & Young China located in Europe, Middle-East, India and Africa (EMEIA). Through this specialized network, the service provided by Ernst & Young in Belgium facilitates Chinese investors to expand to the rest of these countries.

This booklet provides the busy executive with a quick overview of the country’s investment climate, taxation, forms of business organization and accounting practices, as well as other aspects concerned with initiating and developing business in Belgium.

However, a guide of this nature can only ever provide a cursory overview. To address specific issues, we invite you to contact our professionals and specialists listed at the end of this publication.

We look forward to hearing from you and wish you success in your European ventures.

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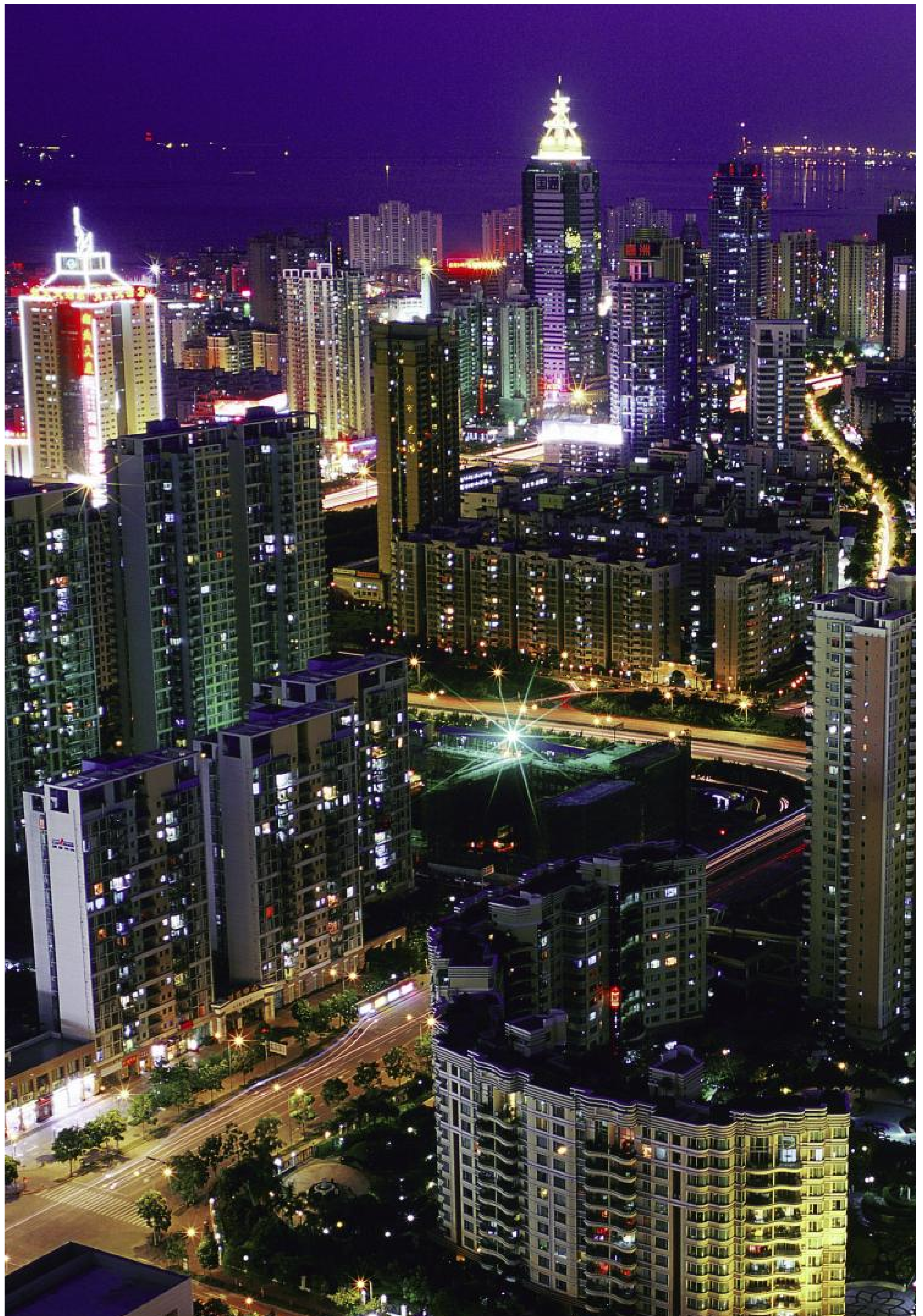

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1. Why invest in Belgium?

Belgium has a long tradition of being one of the most attractive locations to establish a business presence in Europe. Belgium is attractive because of a unique combination of:

- A society, which is open to many nationalities and cultures;
- An open and stable economy;
- An excellent infrastructure;
- A highly educated and multilingual workforce;
- A modern, flexible law system; and
- Tax advantages.

As a consequence Belgium is most often selected as a base for:

- European headquarters;
- Trading companies and branches;
- Distribution centres;
- Holding companies;
- Finance companies; and
- Royalty companies.

Traditionally, the Belgian economy has been an open one, favouring foreign investments and trade by imposing as little barriers or tariffs as possible. Inflation is almost non existent and the Euro has proven to be a strong currency. A number of the largest multinationals in the world are of Belgian origin or have established a regional headquarter or distribution center in Belgium (Bekaert, Nike, General Electric, etc.).

Belgium is often called the gateway to Europe, which makes sense if one looks at Antwerp, one of the largest ports in Europe, and at Brussels, which is the center of the European Union, hosting numerous international organizations and public authorities. This combined with the available expertise in such areas as distribution, international trade and freight forwarding, makes Belgium one of the most attractive locations for establishing European headquarters and branches dealing with trade and distribution throughout Europe. Through its efficient tax system and financial infrastructure, it is an ideal location to establish a holding, acquisition or finance company. In addition, the Belgian population is multilingual and is more internationally oriented than that of many of its neighbouring countries. A large portion of the workforce and the Administration speaks French and English and has no difficulty in meeting and working with foreign colleagues.

2. Legal forms

2.1. Overview

Belgium offers a choice between various types of legal entities for foreign investors intending to invest in Belgium, for example:

- Private limited liability company (BVBA/SPRL);
- Public limited liability company (NV/SA);
- Branch office;
- Cooperative;
- Partnership;
- European company;
- European cooperative;
- European economic interest group.

Among these types of companies, the most commonly used forms adopted by Chinese investors are the public limited liability company (NV/SA), the private limited liability company (BVBA/SPRL), and the establishment of a branch office.

2.2. Public Limited Liability Company (NV/SA)

2.2.1. Introduction

The NV/SA is, together with the private limited liability company (BVBA/SPRL), one of the most commonly used form of company in Belgium.

A NV/SA must be incorporated by at least two persons. If during its existence a person or corporation becomes the sole shareholder of a NV/SA then a second shareholder should join the company within one year or otherwise the sole shareholder will be considered a joint and several guarantor of all of the obligations of the company and this until a second shareholder has joined the company or until the company has been converted into a BVBA/SPRL.

2.2.2. Registration requirements

The following documents are required for the incorporation of a NV/SA:

1. A notarial deed of incorporation;
2. A financial plan;
3. A bank statement (if in cash) or auditors' statement (if in kind).

A NV/SA is incorporated by means of the execution by a Belgian notary of a notarial deed of incorporation. The NV/SA will acquire separate legal personality as soon as the notarial deed is being filed with the Commercial Court. The company and its directors must be registered with the Crossroad Bank of Enterprises. In case of a small company (i.e. not being part of a big group) proof of management knowledge must thereto be given.

2.2.3. Share capital

A NV/SA has a capital dividend into shares and must have a minimum (issued and) paid-up share capital of EUR 61,500. At least 25% of the share capital must be paid up with a minimum of EUR 61,500. The management can call up the remaining 75% on a later date. Every share shall confer an equal right to the allocation of profits and liquidation surplus. A NV/SA can also issue shares having no voting rights, preferred shares, (convertible) bonds and warrants.

Shares can be easily transferred and do not require specific procedures unless otherwise provided in the by-laws.

2.2.4. Capital contribution

Shares may be paid up either in cash or in kind. Specific formalities apply for the different ways of payment. Cash payments in Euros must be evidenced by a bank statement. If a payment is made in a foreign currency, the bank statement must also disclose the exchange rate at the date of incorporation of the company. Under certain conditions, the capital can also be expressed in foreign currency.

If a payment on shares is made in kind, either upon incorporation or thereafter, a Belgian independent auditor must issue a report stating that the value of the agreed contribution, determined in accordance with generally accepted accounting principles, is at least equal to the amount to be paid up on the shares issued.

2.2.5. Distribution of profits reserves

The general meeting decides on the distribution of a dividend out of the earnings realized. The general meeting may decide to pay a dividend or to add the earnings to the company's reserves. Dividends can only be paid to the extent that the shareholders' equity exceeds the share capital together with reserves that must be maintained based upon the Belgian Company code or the by-laws. Unlike practice in some countries, share premium (paid-up surplus on shares) may be distributed as dividend although by-laws will prohibit it. The general meeting can at any time declare also an intermediary dividend ("*tussentijds dividend*") out of the retained earnings. Earnings of the current financial year however cannot be distributed through an intermediary dividend.

The board of directors can, insofar authorized by the by-laws, declare an interim dividend out of the retained earnings and the earnings of the current year. A financial statement of assets and liabilities must thereto be established proofing that the earnings are sufficient to declare an interim dividend. The statement must be controlled by the statutory auditor. Interim distributions cannot be declared during the first six months of the financial year. A second interim dividend can only be declared three months after the first interim dividend distribution.

2.2.6. Corporate structure

The constituent bodies of a NV/SA are the board of directors (in Dutch: "*bestuurder*" and in French "*administrateur*"), and the general meeting of shareholders (in Dutch: "*algemene vergadering van aandeelhouders*" and in French "*assemble générale des actionnaires*").

1. Board of directors

The board of directors is the executive body of a NV/SA. The board is appointed by the general meeting of shareholders for a maximum term of six year and should consist of at least three directors unless the company has only two shareholders in which only two directors must be appointed. A director may be re-elected. Directors can be dismissed at any time. The directors may be either legal entities or individuals. Corporations have to appoint a permanent representative who will be liable for the execution of the mandate. There are no nationality or residency requirements nor should a director be a shareholder of the company. The board of directors can appoint amongst its members a managing director liable for the daily management of the company.

The board of directors is responsible for managing the company, i.e. the preparation, adoption and implementation of the policy of the company. All powers not allocated to another corporate body, by law or by the by-laws, are vested in the board of directors. The board of directors also represents the company vis-a-vis third parties.

2. General meeting of shareholders

The most important powers of the (general meeting of) shareholders of a NV/SA include the following: issuance of new shares; appointment, suspension and dismissal of the directors; amendment of the company's by-laws; adopting the annual accounts of the company; and making decision to liquidate, convert, merge or de-merge the company.

3. Management committee

The board of directors can delegate its powers to a management committee except for the general management and strategic decisions, those competencies that by law or the by-laws have been exclusively attributed to the board of directors, and the control over the management committee.

The management committee can be composed of persons, directors or not. The conditions for their appointment, their dismissal, the term of their mandate and the functions of the management committee are to be determined in the by-laws or by the board of directors. The appointment or dismissal of a member of the management committee must be published in the Annexes to the Belgian Official Gazette.

The by-laws of the company can grant one or more members of the management committee the powers to represent the company solely or jointly.

2.2.7. Audit

A statutory auditor must be appointed if the threshold provided by law is exceeded. Companies not exceeding more than one of the following criteria do not have to appoint a statutory auditor:

- Balance sheet total of EUR 3,650,000;
- Turnover (excl. VAT) EUR 7,300,000;
- Annual average of workers employed not more than 50.

Companies with an annual average of workers exceeding 100 must always appoint a statutory auditor. Companies that form part of a group that must draft consolidated accounts, have to calculate the criteria on a consolidated basis.

The auditors are appointed by the general meeting of shareholders amongst the members of the Belgian Institute of Auditors (IBR). They are appointed for renewable terms of three years. The auditor may not exercise any other function in the company.

2.3. Private Limited Liability Company (BVBA/SPRL)

2.3.1. Introduction

The BVBA/SPRL is, together with the public limited liability company (NV/SA), one of the most commonly used forms of companies in Belgium. A BVBA/SPRL is the more closely held company and has in the past mainly been used for smaller companies. Recent changes in the legislation however have faded away a lot of the differences that existed between the BVBA/SPRL and the NV/SA and resulted in a larger use of the BVBA/SPRL by bigger companies.

The regulation applicable to BVBA/SPRL's is similar to that of NV/SA's but has also some specific features:

- The statutory minimum capital upon incorporation is fairly low (i.e. EUR 18,550); only 20% of the share capital must be paid up with a minimum of EUR 6,200;
- The shares cannot be transferred than with the prior approval of at least fifty percent of the shareholders, representing at least three quarters of the share capital. Unless the by-laws provide otherwise, such consent shall not be required if the shares are transferred or transmitted to:
  - Another shareholder;
  - To a spouse of the transferor;
  - To a blood relative; or
  - To another person permitted by the by-laws (i.e. another group company).

  The bylaws can impose more stringent provisions;
- The company can have one single shareholder insofar the sole shareholder is a natural person;
- Managers can be appointed for an unlimited term;
- The BVBA/SPRL can have statutory managers that can only be dismissed/replaced via an amendment of the by-laws;
- The board of managers can exist out of only one manager;
- A BVBA/SPRL cannot distribute an interim dividend; the general meeting can however declare an intermediary dividend out of the retained earnings;
- The exit scenario is appealing and voluntary liquidation alternatives are relatively easy.

Major differences between a NV / SA and BVBA / SPRL		
	NV / SA	BVBA / SPRL
Statutory minimum capital	EUR 61,500	EUR 18,550
Capital to be paid up	Paid in capital: each share must be paid in for at least 25% with a minimum of EUR 61,500	Paid in capital: each share must be paid in for at least 20% with a minimum of EUR 6,200
Distribution of profits	Annual dividend Interim dividend Intermediary dividend	Annual dividend Intermediary dividend
Manager	One or more managers (can be natural person or corporations) Managers can be appointed for an limited or unlimited term Statutory manager can be appointed Each manager may represent the company	At least three directors must be appointed (can be natural person or corporations) If the company has only two shareholders, only two managers must be appointed Managers are appointed for a maximum period of six years Company is represented by its managing directors or by two directors acting jointly The board can install an executive committee

2.4. Branch

A Chinese company is allowed to perform its business activities in Belgium. It is not required for such company to adopt a particular Belgian legal form. A branch (in Dutch: "*bijkantoor*" and in French "*succursale*") has no separate legal entity status and shall therefore be regarded as an integral part of the foreign head office (entity). The head office (shall) own(s) all assets, incurs all liabilities and debts deriving from the branch's operations. The head office will be fully liable for all obligations deriving from the Belgian activities. As a consequence, the head office is also the contractual partner for customers, employees and business partners of the Belgian branch.

The establishment of a Belgian branch requires a decision by the board of directors of the parent company. Additional documents must be provided some of which must be legalized and translated into Dutch or French depending on where the branch office shall be located. The annual accounts of the parent company must also be filed with the Belgian National Bank.

The next page show the comparison between a NV/SA and a Belgian branch from the Belgian legal perspective.

The choice between a BV and a branch	
NV/SA	Branch
1. Minimum capital requirements	1. No minimum capital requirement
2. A NV/SA is relatively easy to incorporate	2. A branch is not a separate legal entity. The foreign head office is responsible for the liabilities /obligations of its Belgian branch
3. A NV/SA is a legal entity and the liability of its shareholders is limited to the amount of share capital contributions	3. The creditworthiness of a Belgian branch is determined by its foreign head office
4. All shares in a NV are registered (all the shareholders are known)	4. Management ("legal representative") of a Belgian branch is controlled by its foreign head office
5. A NV is subject to auditing and filing requirements	5. Unrestricted legal structure

3. Immigration

For Chinese nationals who visit Belgium and stay within a period of 90 days in a six-months period, a short-term visa type C is required to enter the country. This visa does not allow them to take up employment in Belgium or to stay longer than three months. For assignees coming to work in Belgium, a work permit is required, based on which a residence permit can be obtained. To take up employment legally in Belgium, Chinese nationals should obtain a work permit as of day one.

3.1. Work permit application

Chinese nationals wishing to work and stay in Belgium must apply for a work permit and subsequently a residence permit. The application of the work permit should be submitted by the employer and the permit needs to be obtained before the employee is allowed to come to Belgium. Once an employee has been given a valid work permit for Belgium, he is allowed to enter Belgium and to carry out employment activities in Belgium.

The work permit can either be requested on behalf of the Chinese employer, who is sending out the employee to Belgium or on behalf of a legal entity in Belgium, where the assignment will take place. In case the request is made by a Chinese employer, it is possible to request exemption from social security contributions for employees in Belgium, which may not be possible when the request is made by a Belgian company.

There are various legal possibilities in requesting a work permit for employment in Belgium. As access to the local labour market is restricted, certain conditions need to be met on the qualification of the employee and of the level of salary, to be paid out in Belgium. There is a requirement to meet minimum wage rules in Belgium, so in most cases a minimum salary requirement is to be met in order to obtain a work permit.

Alternatively, a work permit (type B) can easily be obtained (without any discretion of the authorities) if the expatriate can be considered as highly qualified or managerial employee from an immigration perspective.

3.2. European Blue Card project

A Belgian work permit can only be used by employees to carry out professional activities in Belgium. Europe has introduced a Blue Card document for highly qualified employees from third countries, which enables employment in more than one European Union member state. The European Blue Card has been created in order to facilitate cross border professional activities across Europe by limiting the requirements in each individual country.

3.3. Professional card

A specific permit (so-called "*Professional card*") is required for persons, who carry out a self employed activity in Belgium. This also applies for non-EU nationals, who are working in Belgium as Members of the Board of Directors of a Belgian.

These individuals have to request a professional card, before they are allowed to carry out their activities in Belgium.

4. Social security system

As there is no social security treaty between Belgium and China, the social security is governed by national social security rules of Belgium and China.

The Belgian social security system makes a distinction between two systems, for employees on one hand and for directors and other self employed persons on other hand.

4.1. National Social Insurance for employees

Main rule is that, based on Belgian law, persons working in Belgium are in principle covered by the national social insurance scheme for employees, respectless of the duration of employment in Belgium.

Expatriates may therefore become subject to Belgian social security scheme for employees to the extent that they pursue activities in Belgium.

The employee social insurance system offers a large degree of social coverage, but only for an employee and his dependent family members, provided that they reside in Belgium. Coverage includes for example:

- Pension;
- Health care and medical benefits;
- Disability payments (illness or accident);
- Family allowances (for children of the employee);
- Unemployment benefits.

In principle, these benefits are only paid to individuals, residing in Belgium. This means that after the end of the Belgian assignment, no further payments are made to individuals, who have returned to China.

The national social insurance contributions are due by the employee and by the employer on a quarterly basis. While the employee pays a contribution of 13.07% of his gross remuneration, the employer pays a contribution of approximately 35%. There is no annual ceiling of income for the calculation of the social security contributions for employees.

4.2. Exemption of social security

In the absence of a Totalization Agreement between China and Belgium on Social Security, Chinese employees who will be assigned to Belgium to perform professional activities on Belgian territory, can possibly be exempted from the Belgian social security scheme.

The Belgian social security legislation, more in particular article three of the Social Security Laws, offers an exemption from Belgian social security contributions under the following main conditions:

- The exemption can only be obtained for employees who are not employed by the Belgian company;
- There has no Social Security Treaty entered into force between the two countries involved (Belgium and China).

If all conditions are met, this could result in an exemption from Belgian social security contributions with respect to the assignment of Chinese employees on the Belgian territory. In such case, the work permit should be requested on behalf of the Chinese employer.

Although there is no formal requirement to request exemption, most employers prefer to notify the Belgian social security authorities of their intention to apply such exemption. There is no time limitation for the exemption of social security (this continues as long as the employment by the Chinese employer is continued).

If exemption from social security is applied, the employee will not be entitled to Belgian social security benefits and may need to rely on company provided insurance schemes for social insurance purposes for him and his dependent family members.

4.3. Self employed social security

A separate social security scheme exists for self employed workers, which is also applicable to members of the board of directors of Belgian companies.

Under such scheme, the individual is entitled to similar social security benefits as compared to employees (though at a somewhat lower coverage level). The contributions for self employed social security are calculated on a quarterly basis. There is an annual income ceiling for the calculation of the self employed social security contributions. In this way, the contributions will not exceed a quarterly maximum of approximately EUR 4,000, irrespective of the level of income of the individual.

It is possible for a director of a company in Belgium to have a mixed professional activity as an employee on one hand and as a self employed person on the other hand. In case he is subject to Belgian social security contributions for employees, there may be a possibility to request exemption from self employed social security contributions with the competent authorities.

4.4. Limosa declaration

Further, the Limosa legislation has entered into force on 1 April 2007, which provides that a mandatory Limosa declaration must be filed for employees who perform professional activities in Belgium and who:

- Normally work in a country other than Belgium;
- Are recruited in a country other than Belgium.

There are exemptions to this general obligation, related to the nature and the short duration of the activities in Belgium.

In most cases, it is the foreign employer or the entity on whose premises the activities are carried out in Belgium who does the Limosa declaration. Most important is that the activities should be disclosed before they start.

5. Tax

5.1. Corporate income tax

5.1.1. Overview

- Ordinary corporate income tax rate is 33.99%;
- 95% participation exemption of dividends from qualifying subsidiaries;
- Domestic dividend withholding tax rate is 25%/15% but often reduced/exempt under tax treaties and/or EU-Parent Subsidiary Directive and/or Belgian domestic tax law;
- No taxation of captial gains on shares (if qualifying for participation exemption);
- Domestic interest and royalties withholding tax rate is 15% but often reduced/exempt under tax treaties and/or European Interest and Royalties Directive and/or Belgian domestic tax law;
- Patent income deduction;
- Accelerated depreciation;
- Notional interest deduction (tax deduction on qualifying net equity);
- Investment deduction c.q. tax credit (for research & development, patents, etc.);
- Tax incentive for audiovisual investments;
- Tax rulings: there is a possibility to obtain certainty in advance with the Belgian tax authorities regarding the Belgian tax aspects of contemplated operations (e.g. intercompany pricing aspects) or proposed transactions;
- Extensive treaty network (more than 90 tax treaties);
- No CFC legislation;
- No general debt/equity ratio;
- No capital tax/wealth tax;
- No tax group consolidation (“*fiscal unity*”).

5.1.2. Taxable persons and taxable income

Foreign investors doing business in Belgium may structure their business in Belgium mainly in two ways:

- To set up a Belgian subsidiary (separate legal entity);
- To set up a Belgian branch (no separate legal entity).

1. Resident companies

A subsidiary constitutes a legal entity separate from its shareholders. Only entities with legal personality are subject to Belgian corporate income tax.

A Belgian resident company is taxable on its worldwide income. The taxable income is determined on the basis of the annual accounts of the company and is adjusted for non tax deductible items and supplementary tax deductions (e.g. notional interest deduction, dividend participation exemption, etc.).

2. Non-resident companies

The branch is part of the same legal entity as its head office and does not constitute a separate legal body in Belgium.

Non-resident companies are subject to the corporate income tax on non-residents on their Belgian-source income only, e.g.:

- Income and capital gains from immovable property in Belgium;
- All income derived trough a permanent establishment in Belgium;
- Income derived from an association in Belgium without legal personality (e.g. certain partnerships).

5.1.3. Corporate income tax rates

The ordinary corporate income tax rate is 33% (for both resident and non-resident companies) increased to 33.99% by a 3% surtax (crisis contribution).

Furthermore, under certain conditions Belgian domestic tax law provides also in reduced tax rates for Belgian resident and non-resident companies:

24.25%	EUR 0.00 till EUR 25,000.00
31%	EUR 25,000.00 till EUR 90,000.00
34.5%	EUR 90,000.00 till EUR 322,500.00

In addition, a 3% surtax (crisis contribution) is levied.

Amongst others, the below mentioned conditions have to be met:

- The taxable profit may not exceed EUR 322,500.00;
- The company is not a holding company and is not 50% or more owned by another company;
- The company does not qualify as a financial company;
- The dividend distribution may not be higher than 13% of the paid-in capital of the company;

- The company has to pay a salary of at least EUR 36,000.00 to at least one director.

5.1.4. Losses

In principle and according to Belgian domestic tax law, the full amount of tax losses can be carried forward without any limitation in time.

However, losses may not be carried forward if there is a change in ownership which does not meet legitimate financial or economic needs.

Furthermore, please note that special rules limit the carry forward and/or deduction of tax losses in case the company is involved in certain tax-exempt reorganizations.

Tax losses cannot be carried back.

5.1.5. Holding activities

1. Participation exemption

Based on Belgian domestic tax law, dividends received can be exempted up to 95% of the gross amount received provided certain conditions are met. Consequently, 5% of the gross amount of the dividends will be taxed (1.7% taxation but possibly wiped out by expenses).

Without going into further detail, the following conditions have to be met:

1. Participation condition

- A minimum shareholding of either 10% of the shares of the distributing company or a shareholding with an acquisition value of at least EUR 2,500,000.00;
- The participation needs to have the nature of financial fixed assets;
- A minimum holding period of at least one year is required.

2. Taxation condition

- The distributing company has to be an "*ordinary*" taxed company in the residence state.

So, certain dividends received from financing, treasury and investment companies, from companies located in "*tax havens*", from intermediary companies, etc. may not benefit from the participation exemption.

2. Withholding tax

Based on Belgian domestic tax law, dividends are, in principle, subject to a Belgian withholding tax of 25% c.q. 15%.

In the event of a liquidation of the company, a 10% withholding tax is imposed.

According to the EC Parent-Subsidiary Directive, no withholding tax is due on dividends paid by resident subsidiaries to their parent company resident in EU Member States if certain conditions are met.

Furthermore, an exemption or reduction of withholding tax can be obtained based on the relevant double tax treaty and/or based on Belgian domestic tax law.

3. Capital gains and losses on shares or participations

Capital gains on shares or participations can be exempt if the dividends relating to such shares or participations qualify for the taxation condition of the participation exemption (see above). The participation condition, however, has not to be met for purposes of the tax exemption of capital gains.

Capital losses on shares or participations are generally not tax deductible.

5.1.6. Financing activities

1. Interest payments

The applied interest rate needs to be "*at arm's length*", i.e. should be equal to the prices and terms that would be agreed upon between non-affiliated, independent companies for equivalent transactions in an open market situation. If not, the Belgian tax authorities could impose tax adjustments which are based on the notion of "*abnormal or gratuitous advantages*".

If the paid compensations to a foreign company are too high, the Belgian tax authorities may consider the difference as an abnormal or gratuitous advantage granted to a foreign company that, in principle, has to be added to the taxable base c.q. can be set off against the accumulated tax losses.

If the paid compensations to a foreign or a Belgian company are too low, the Belgian tax authorities may argue that the company has received an abnormal or gratuitous advantage. The Belgian Income Tax Code stipulates that such advantages cannot be compensated with certain tax deductions, i.e. the (accumulated) tax losses, the notional interest deduction, the investment deduction and the participation exemption (dividends received).

Furthermore, the amount of the abnormal or gratuitous advantage received will in any case be the minimum taxable base that will be submitted to the corporate income tax ad. 33,99%.

2. Specific thin capitalization rules

There is no general thin capitalization rule. However there are two very specific thin cap rules.

7:1 debt/equity ratio	1:1 debt/equity ratio
The tax deductibility of interest paid to foreign companies can be refused by the Belgian tax authorities, if the so-called "*debt/equity ratio of 7/1*" is exceeded. This latter ratio is exceeded if the following conditions are met: ▸ The interest is paid or granted to a beneficial owner who is not subject to any corporate income tax and/or, on behalf of whom, the interest received benefits from a more favourable corporate income tax regime than the Belgian regime; and ▸ The total amount of the debts of the Belgian company exceeds at any time seven times the total of the taxed reserves at the beginning of the taxable period and the fiscally paid-in share capital at the end of the taxable period.	▸ Possibility of requalification into dividend payments of interest payments to an individual and/or a non Belgian based company lender being at the same time director of the Belgian company.

3. Interest payments to certain foreign entities

If the – direct or indirect- beneficiary of the interest payments benefits from a more favourable corporate income tax regime than the Belgian regime and/or the interest would be taxed in a substantially more favourable way than in the Belgian tax regime, the Belgian tax authorities can refuse the tax deductibility of the whole interest amount.

The Belgian company and/or branch can counter the refusal of the Belgian tax authorities by proving that the interest payment corresponds to real and sincere (i.e. bona fide), business motivated transactions and does not exceed normal market conditions.

4. Withholding tax

Based on Belgian domestic tax law, interest payments are, in principle, subject to a Belgian withholding tax of 15%.

According to the European Interest and Royalty Directive, no withholding tax is due on interest payments made between related EU companies if certain conditions are met.

Furthermore, an exemption or reduction of withholding tax can be obtained based on the relevant double tax treaty and/or based on Belgian domestic tax law.

5.1.7. Intellectual property /Research & Development activities

1. Royalty payments

The royalty payments need to be "*at arm's length*". If not, the Belgian tax authorities could impose tax adjustments which are based on the notion of "*abnormal or gratuitous advantages*" (see above).

2. Withholding tax

Based on Belgian domestic tax law, royalty payments are, in principle, subject to a Belgian withholding tax of 15%.

According to the European Interest and Royalty Directive, no withholding tax is due on royalty payments made between related EU companies if certain conditions are met.

Furthermore, an exemption or reduction of withholding tax can be obtained based on the relevant double tax treaty and/or based on Belgian domestic tax law.

3. Deduction for patent income

Effective from the tax year 2008, Belgium introduced the so-called "*tax deduction for patent income*". Due to a substantial deduction ad 80% for income from patents, the tax burden on such income falls from the normal rate of 33.99% to an effective tax rate of 6.8%. The tax deduction is available to both Belgian and foreign companies.

The tax deduction applies to:

- **Self-developed patents in Belgian companies** (irrespective of whether they are developed in research centers in Belgium or abroad);
- **Purchased or licensed patents** from related or unrelated companies provided that they are further developed in research and development centers in Belgium or abroad. The improvement does not have to result into additional patents).

You can also claim the tax deduction for supplementary protection certificates and for patents used for the provision of services.

The amount of the tax deduction is:

- **For patents licensed to related or unrelated third parties:** 80% of the patent income received;
- **For patents used in the production process self:** 80% of the royalty that would have been received if the company had licensed the patent to an independent third party.

Of course, the depreciation on purchased patents and the payments to the licensor (to the extent they are charged against the taxable profit in Belgium) should be deducted from the patent income for the 80% calculation.

The deduction for patent income is deducted from the profit after the deduction of exempt income (such as certain dividends), but before the deduction for notional interest, the investment deduction, and the losses carried forward.

So, after the patent income deduction, you can further reduce your taxable profit with other incentives such as the notional interest deduction and the investment deduction.

The deduction for patent income applies as of tax year 2008 to all "*new*" patent income, i.e. patents that did not result in sales of patented products or services to independent third parties by the company, a licensee or related company before 1 January 2007.

5.1.8. Other tax incentives

Belgium grants various other tax incentives of which the most important are mentioned below.

1. Accelerated depreciations

Belgian companies have the possibility to depreciate assets according to the straight line method or according to the declining balance depreciation method. The latter generates a higher cost deduction in the earlier years of the life of an asset. The amount of the declining balance depreciation method may not exceed 40% of the acquisition value of the investment. The chosen method must be applied consistently.

The accelerated depreciation method is an optional method that has been provided for in the Belgium tax legislation. The Belgium tax authorities can not challenge the accelerated depreciation method. Certain tax formalities to claim the accelerated depreciation method have to be fulfilled.

2. Notional interest deduction

This notional interest deduction is a general measure, available to all Belgian companies and foreign companies with a Belgian permanent establishment liable to Belgian corporate income tax, granting a tax exemption/deduction of 3.8% (tax year 2011 rate), respectively of 3.425% (tax year 2012 rate) of the company's "*risk capital*". The applicable rate is to be set each year and should follow the average ten-year Belgian government bond rate.

The company's "*risk capital*" corresponds to its equity as it appears in its non-consolidated annual accounts of the preceding financial year. Based on Belgian accounting law and GAAP, the risk capital includes a company's paid in share capital, share premiums, re-evaluation surpluses, reserves, carried-forward results and capital subsidies.

The notional interest deduction, however, is only applicable to the "*adjusted*" risk capital. Therefore, the risk capital has to be reduced by certain items, e.g., the fiscal net value of financial fixed assets consisting of participations and (own) shares, the re-evaluation surpluses, capital subsidies, the net equity of permanent establishments abroad, etc. Variations of the paid in share capital and/or of the items to be deducted during the financial year will be taken into account on a pro rata basis, calculated per month.

If the notional interest deduction exceeds the taxable profit for the year, the excess can be carried forward for seven (calendar) years.

3. Investment deduction

The (ordinary or increased) investment deduction is a deduction that a company can obtain for certain investments, in addition to the depreciations. The (ordinary or increased) investment deduction is equal to a percentage of the cost price of certain investments.

The following ordinary investment deductions apply:

- A deduction of 3% (for tax year 2011) may be taken for investments to encourage the recycling of packaging materials for drinks and industrial products;
- A deduction of 30% may be taken for investments in seagoing vessels.

The following increased investment deductions apply:

- A deduction of 13.5% (for tax year 2011) may be taken by any company for investments in patents, environmental friendly investments in research and development and for energy-saving investments;
- A deduction of 20.5% may be taken for investments in security (only applicable for small and medium sized companies).

For the sake of completeness, please note that for environmentally friendly investments in research and development, any company (regardless of the number of employees) may take a deduction of 20.5% computed on the depreciation taken on the asset in which the investment is made (i.e. spread (increased) investment deduction).

In case of insufficient taxable income, the excess investment deduction can be carried forward, for an unlimited period to subsequent taxable periods.

4. Tax credit for research and development and patents

This tax credit is largely a copy of the investment deduction described above for green investments and new patents. Roughly speaking you could say that the tax credit is equal to the tax that you save with the investment deduction.

The tax credit can be set off against the corporate income tax due and, in case of insufficient taxable base, the non offset part can be carried forward to the next four tax years (taking into account certain conditions). The tax credit amount that has not been offset after these four years is refunded.

The choice between the investment deduction and the tax credit is irrevocable.

5. Incentive for audiovisual investments

A tax incentive is available to support the production of Belgian audiovisual works. To qualify for the incentive, several conditions must be satisfied. These conditions relate to the production company, the investors and the nature of the investment as well as to the audiovisual work itself.

The investors are entitled to a tax exemption of 15% of the invested funds. However, for each accounting period, the exemption is limited to 50% of the taxable reserved profit, with a maximum of EUR 750,000. If the investor does not have sufficient profit, the tax exemption may be carried forward indefinitely.

The tax exemption becomes final after the competent authorities have certified that the conditions were met. This certification must be established within a maximum period of approximately four years following the investment.

5.1.9. Rulings

An advance ruling request (i.e. Advance Tax Rulings or Advance Pricing Arrangements) provides the company upfront with certainty about the application of the Belgian tax law to a particular situation or specific transaction that has not yet taken effect from a tax point of view.

A ruling can be applied in case of, a.o., mergers, (partial) splits and related transactions, contributions, transfer pricing, (absence of) permanent establishment, participation exemption regime, withholding taxes, depreciation rates, tax deductions, capital gains, etc. Please note that the aforementioned is a non-exhaustive list.

During a prefiling meeting, the company can discuss (eventually on a no names basis) with the tax authorities the specific questions and needs.

The Belgian tax authorities will provide an answer on the ruling request within a period of approximately three to six months.

In principle, advance rulings are granted for a period not exceeding five years unless, in special cases, a longer period is justified.

5.1.10. Tax treaty network

Belgium has an extensive tax treaty network and has concluded more than 90 tax treaties containing of favourable provisions.

	Dividends %	Interest %	Royalties %
Albania	5/15	5	5
Algeria	15	15	15
Argentina	10/15	12	15
Armenia	5/15	10	8
Australia	15	10	10
Austria	0/15	15	0
Azerbaijan	5/10/15	10	10
Bangladesh	15	15	10
Belarus	5/15	10	5
Brazil	10/15	10/15	15
Bulgaria	10	10	5
Canada	5/15	10	10
Chile	0/15	15/5	10/5
China	10	10	10
Côte d'Ivoire	15	15	10
Croatia	5/15	10	0
Cyprus	0/10/15	10	0
Czech Republic	0/5/15	10	0
Denmark	0/15	10	0
Ecuador	15	10	10
Egypt	15/20	15	15
Estonia	0/5/15	10	10
Finland	0/5/15	10	5
France	0/10/15	15	0
Gabon	15	15	10
Georgia	5/15	10	10
Germany	0/15	15	0
Ghana	5/15	15	15
Greece	0/5/15	10	5
Hong Kong	0/5/15	10	5
Hungary	0/10	15	0
Iceland	5/15	10	0
India	15	15	10
Indonesia	10/15	10	10
Ireland	0/15	15	0
Israel	15	15	10

	Dividends %	Interest %	Royalties %
Italy	0/15	15	5
Japan	5/15	10	10
Kazakhstan	5/15	10	10
Korea (South)	15	10	10
Kuwait	0/10	0	10
Latvia	0/5/15	10	10
Lithuania	0/5/15	10	10
Luxembourg	0/10/15	15	0
Malaysia	15	10	10
Malta	0/15	10	10
Mauritius	5/10	10	0
Mexico	5/15	15	10
Mongolia	5/15	10	5
Morocco	6.5/10	10	10
Netherlands	0/5/15	10	0
New Zealand	15	10	10
Nigeria	12.5/15	12.5	12.5
Norway	5/15	15	0
Pakistan	15	15	15
Philippines	10/15	10	15
Poland	0/5/15	5	5
Portugal	0/15	15	10
Romania	0/5/15	10	5
Russian Federation	10	10	0
Rwanda	0/15	0	10
San Marino	0/5/15	10	5
Senegal	15	15	10
Singapore	5/15	5	5
Slovak Republic	0/5/15	10	5
Slovenia	0/5/15	10	5
South Africa	5/15	10	0
Spain	0/15	10	5
Sri Lanka	15	10	10
Sweden	0/5/15	10	0
Switzerland	0/10/15	10	0
Taiwan	10	10	10
Thailand	15/20	15	15
Tunisia	5/15	10	11
Turkey	5/20	15	10
Ukraine	5/15	10	10
USSR	15	15	0
United Arab Emirates	5/10	5	5
United Kingdom	0/5/10	15	0
United States	0/5/15	15	0
Uzbekistan	5/15	10	5

	Dividends %	Interest %	Royalties %
Venezuela	5/15	10	5
Vietnam	5/10/15	10	15
Yugoslavia	10/15	15	10
Nontreaty countries	10/15/25	15	15

1. Double tax treaty between Belgium and China

- New income tax treaty signed on 7 October 2009 - Not in force yet;
- The new treaty is basically on par with income tax treaties of other preferred trading/treaty partners of China (such as Hong Kong and Singapore) and can be viewed as a confirmation of Belgium's favorable position in the Asia Pacific region;
- Withholding tax on dividends 5% (from 10%) – Belgian rate 0%;
- Withholding tax on interest 10% (no change);
- Withholding tax on royalties 7% (from 10%);
- Taxing right on capital gains on shares (not real estate) below 25% threshold to state of alienator – Belgian exempts capital gains on shares;
- Expansion of the Belgian participation exemption to low-taxed or untaxed Chinese subsidiaries engaged in an active trade or business;
- Broader permanent establishment exceptions for building sites and the furnishing of services.

2. Double tax treaty between Belgium and Hong Kong

- On 10 December 2003, Belgium and Hong Kong signed a double tax treaty, which came into force in Belgium on 1 January 2004 and in Hong Kong on 1 April 2004;
- Withholding tax on dividends 0%;
- Withholding tax on interest 10%;
- Withholding tax on royalties 5%.

5.1.11. Branch exemption rules

Pursuant to tax treaties concluded by Belgium, income derived from a foreign branch of a Belgian company is included in the worldwide income and subsequently exempt for corporate income tax purposes.

5.1.12. Tax compliance

1. Filing of an income tax return

Belgian subsidiaries and Belgian permanent establishments have to file each year (i.e. per financial year) an income tax return.

In principle, the aforementioned income tax returns must be filed by the date mentioned on the official return forms. A postponement of the filing date can, however, be obtained.

The tax returns must be accompanied by the balance sheet, profit and loss account and several other documents mentioned in the forms, e.g. the report of the board of directors, the minutes of the general meeting of the shareholders.

2. Tax prepayments

The Belgian prepayment system enables a company and/or branch which finds itself in a profitable situation to pay corporate income taxes during the financial year itself instead of after having received the tax assessment note. These so-called "*prepayments*" are calculated on the provisional profit of the company.

If no or insufficient prepayments are made during a financial year, a surcharge will be due on the amount of the corporate income tax due for that financial year. The surcharge varies from year to year and is calculated as a fixed percentage on the corporate income tax due (decreased by withholding taxes paid, if any).

When the corporate income tax due is calculated for a given year, the tax authorities will calculate the surcharge as if no prepayments were made. A credit is then calculated for the prepayments made, which will be offset against the surcharge. This tax credit is determined as a percentage of the amount that has been prepaid and is related to the quarter during which these payments have been made.

It is possible to pay a higher amount in some quarters and a lower amount in others in order to have the tax credit break-even with the surcharge.

3. Statute of limitations

According to the Belgian general statute of limitations, the Belgian tax authorities can carry out a tax audit for a financial year up to three years from the end of that financial year. In cases of fraud this period is extended to seven years.

For loss making companies, the Belgian tax authorities can still adjust the amount of the tax losses of those financial year(s) in which those losses arose up to three years after the financial year in which the tax losses are utilised.

Please note that in certain specific circumstances other assessment periods may apply.

4. Tax increase and penalties

According to the Belgian Income Tax Code, in the absence of a tax return or in case of an incomplete or incorrect tax return, the taxes due on the non reported income shall be increased. These tax increases vary from 0% up to 200 % of the additional tax. The rate of the surcharge depends on the degree of intent to avoid tax or the degree of the company's negligence (existence of bad faith and/or repeated infringement).

The Belgian corporate income tax authorities can also impose an administrative penalty varying from EUR 275 to EUR 6,875 for each infringement of the provisions of the Belgian Income Tax Code. If fraud or deceitful intent is established, a prison sentence of eight days to two years and/or a penalty ranging from EUR 1,375 to EUR 687,500 can be applied.

5. Storage of documentation

Belgian companies and Belgian permanent establishment are obliged to store their relevant documents (i.e. annual accounts, profit and loss accounts, income tax returns, etc.) for at least seven years.

5.2. Transfer Pricing

Transfer pricing comprehends the price charged between related entities for all types of transactions such as transactions involving tangible goods, intangible property, services, loans, or any other transaction which includes payments, credits, allowances, deductions, interest rates, information transfers, and rights to use property. It is considered by multinationals as being the key international tax issue.

5.2.1. Transfer pricing requirements in Belgium

While no specific transfer pricing legislation exists in Belgium, the arm's length principle was formally introduced into the Belgian tax law by the law of 21 June 2004, introducing Article 185, § 2 of the Belgian Income Tax Code (ITC) (entered into force on 19 July 2004). In addition, the ITC contains various provisions which directly or indirectly relate to transfer pricing. These provisions can be found in articles 26, 49, 54, 55, 79, 207, 344 and 345 of the Belgian ITC. These articles deal with the notion of abnormal and gratuitous benefits (indirectly embodying the arm's length principle), the deductibility of expenses and avoidance of the shifting of profits. In particular, transfer pricing applies to the following situations:

- When an enterprise, directly or indirectly, participates in the management of, or the control as to, or in the capital of another enterprise;
- When the same person, directly or indirectly, participates in the management of or the control as to, or in the capital of the one and the other enterprise;
- Dealings between a head-office and a branch.

In addition, while not included in the Belgian tax code, some additional obligations exist for entities to review (and document) the arm's length nature of their intercompany transactions, whereby non-compliance may potentially result in, amongst other, director liability.

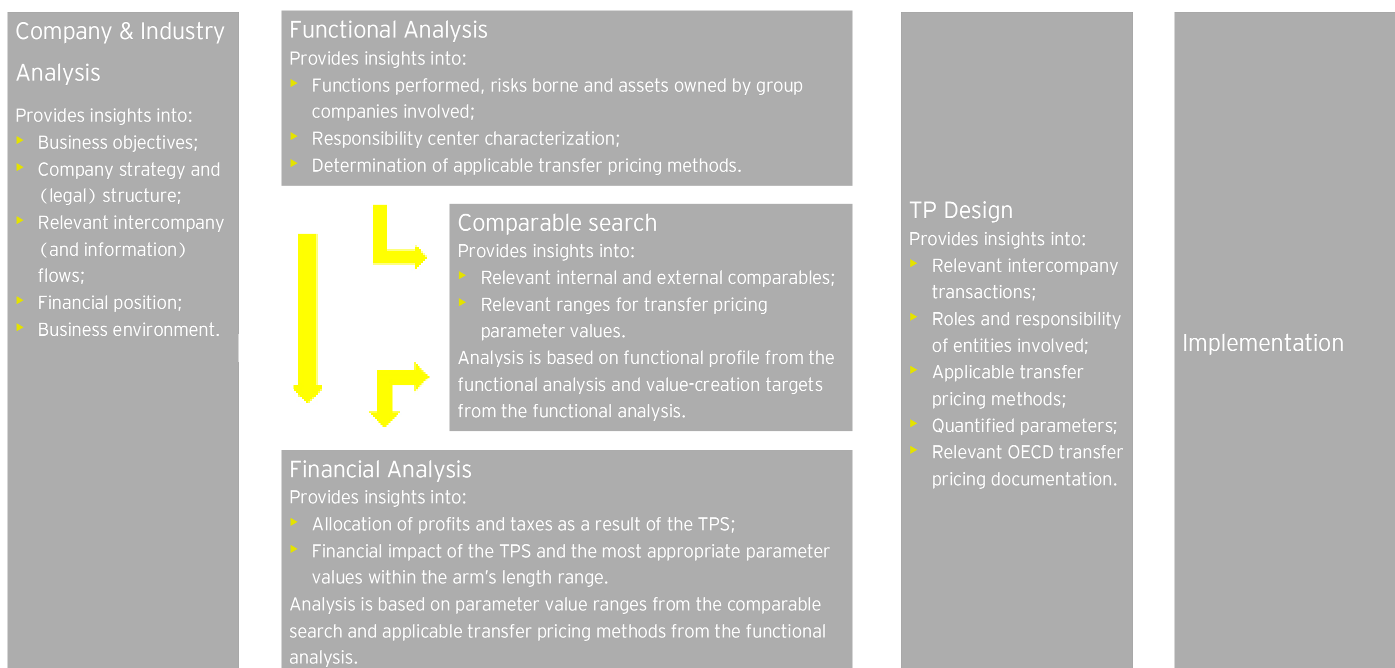
The arm's length principle as introduced in Belgian tax law by the law of 21 June 2004 (equivalent to Article 9, § 1 and § 2 of the OECD Model Tax Convention) states that taxpayers, engaged in transactions with associated entities, should do so under the same conditions and prices as would have been agreed upon between independent parties. As a consequence, the Belgium tax authorities can request taxpayers to demonstrate that their intercompany transactions and the prices charged thereof occur at arm's length.

The Belgian tax authorities generally follow the transfer pricing principles as stated in the OECD guidelines. Further guidance regarding the interpretation and application of the arm's length principle is provided through administrative guidelines issued by the tax authorities. These guidelines are aligned with the approach recommended by the European Joint Transfer Pricing Forum and refer to the concept of a prudent business manager in order to encourage companies to ensure that transfer pricing documentation is available.

The objective of the administrative guidelines is to provide insight on information that can be requested by a tax inspector in case of transfer pricing audit and to provide clarification on several issues. In these guidelines, it is indicated that, in order to demonstrate the arm's length nature of intercompany transactions, taxpayers should as a minimum provide information on the industry they are active in, the internal factors enabling the company to compete within its industry, the sharing in functions, risks and assets between the parties to the transaction, and have available benchmarking analysis covering the specific transaction. Documenting transfer prices therefore consists in providing, at a minimum, information as regards the following elements:

- Information about the associated enterprises involved;
- Information on the intercompany transactions between the associated enterprises;
- A comparability analysis;
- A substantiation of the choice of the transfer pricing method applied;
- Establishment of transfer prices applied;
- Other documents, such as management accounts, budgets and minutes of shareholder and board meeting.

The above can be depicted in some more detail as follows:



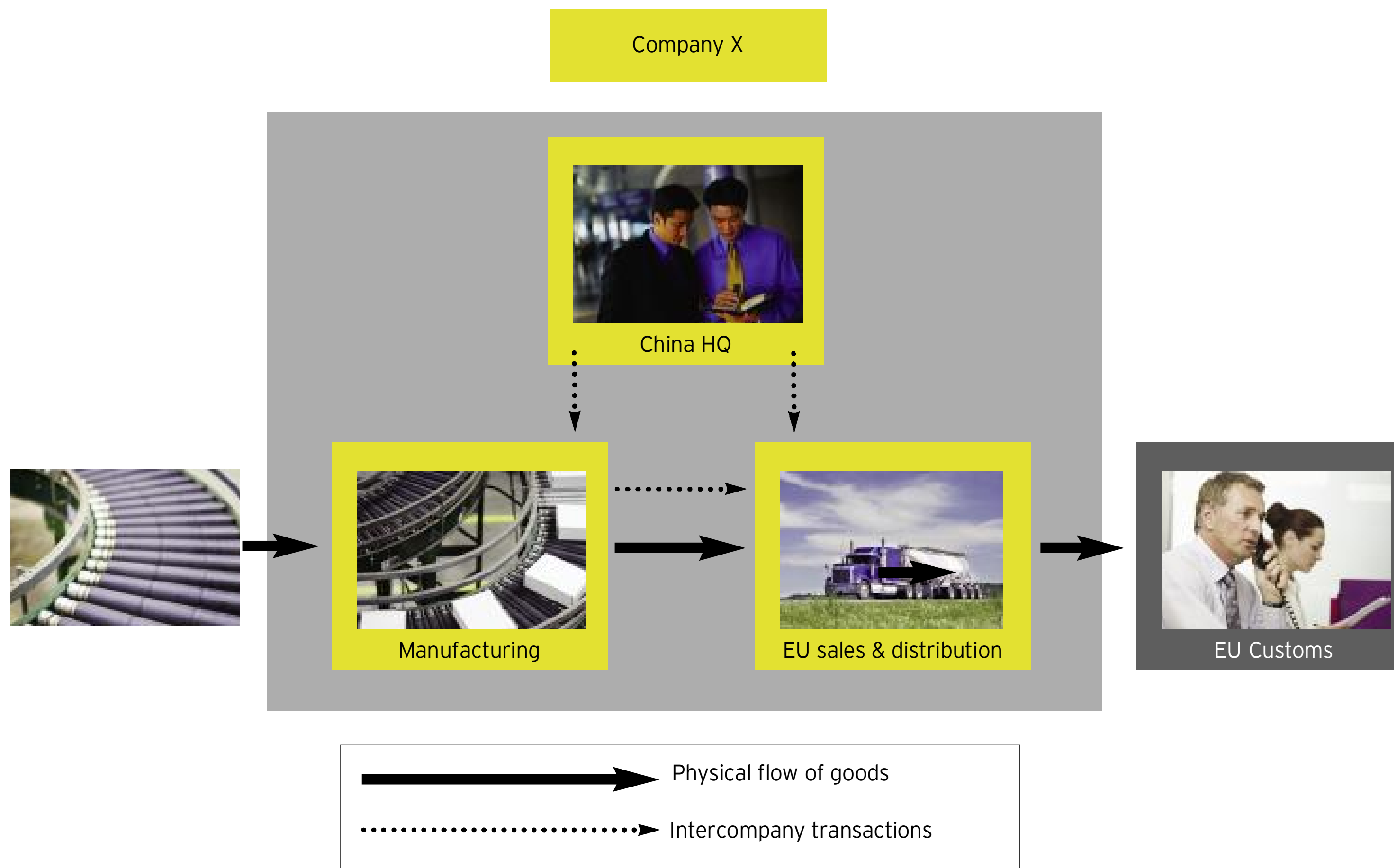
In principle, documentation to support compliance with the arm's length principle should be made available to the tax authorities within one month following their request to do so. An extension can however be requested provided that valid reasons exist. In case no sufficient information on how the transfer prices have been established is provided to the tax authorities, the burden of proof regarding the arm's length nature of intercompany transactions lies with the taxpayer (reversed burden of proof).

5.2.2. Overview of typical intercompany transactions

In Belgium, all intercompany transactions fall under the scope of application of the arm's length principle. In general, the transactions comprehend all intercompany transactions related to goods, services, intellectual property and financing.

For easy reference we have depicted some of the most common intercompany transactions below and provide an overview of possible intercompany transactions regarding:

- Management services rendered by a headquarter (*"HQ"*) to manufacturing and local sales, distribution and marketing affiliates;
- Intercompany buy/sell transactions from manufacturer to European sales, distribution and marketing;
- Manufacturing services for the HQ; and
- Sales, distribution and/or marketing services for the HQ, etc.



5.2.3. Managing transfer pricing risks

While no separate transfer pricing related penalties exist, transfer pricing adjustments are subject to the general tax penalty framework. These penalties vary from 10% up to (in very exceptional cases) 200% of the additional tax. The rate depends on the degree of the company's gross negligence. Furthermore interest for late payments is due on additional tax assessment which includes assessments resulting from transfer pricing adjustments.

It is therefore important for your organization to comply with the arm's length principle when setting prices between related parties. Although most jurisdictions (especially OECD member countries) follow the arm's length principle in regulating transfer prices, tax authorities may interpret and apply this principle in different ways. Furthermore, the transfer pricing area is typically represented by many different stakeholders such as tax, legal, finance, accounting, but also business planning teams, human resource departments and other functional groups.

In order to define a structured approach to transfer pricing risk management, it is important to define roles and procedures for the transfer pricing functions within your organization. Also, transfer pricing compliance is very much intertwined with risk management. The risk embedded in transfer pricing documentation goes beyond merely meeting local documentation requirements for avoidance of penalties or other negative consequences. Consistency is required compared to legal agreements, transfer pricing policies, support data, financial projections and company communications with regard to transfer pricing (e.g. management letters).

Ernst & Young Belgium's approach to transfer pricing risk management and compliance entails a structured process going from assessing risk and developing strategies to manage underlying risks to the preparation of (specific) transfer pricing documentation. This includes:

- Determining a formal transfer pricing strategy/policy aligned with business objectives and an associated transparent tax decision-making framework;
- Developing a transfer pricing risk framework that identifies risks and puts in place controls that are workable and effectively develop a cost-efficient transfer pricing documentation platform in a manageable way;
- Compliance with transfer pricing documentation guidelines;
- Facilitate documentation maintenance policies;
- Facilitate a consistent and relevant disclosure of information to Belgian tax authorities.

5.2.4. Managing uncertainty

In addition to the increased transfer pricing audit activity through a dedicated Belgian Transfer Pricing Cell, tax inspectors are also increasing their focus on transfer pricing during general tax audits, leading to further inquiry and increasing the depth of the audit. The 2006 administrative guidelines contain a list of instances which are considered to constitute a high transfer pricing risk. The instances which lead to increased audit scrutiny include structural losses, business reorganizations, migration of businesses, the use of low-tax rate countries, back-to-back operations, circular structures and the sending of invoices for services at year-end (in particular for management services). This list is not exhaustive and does not preclude other situations that may be subject to an in-depth audit.

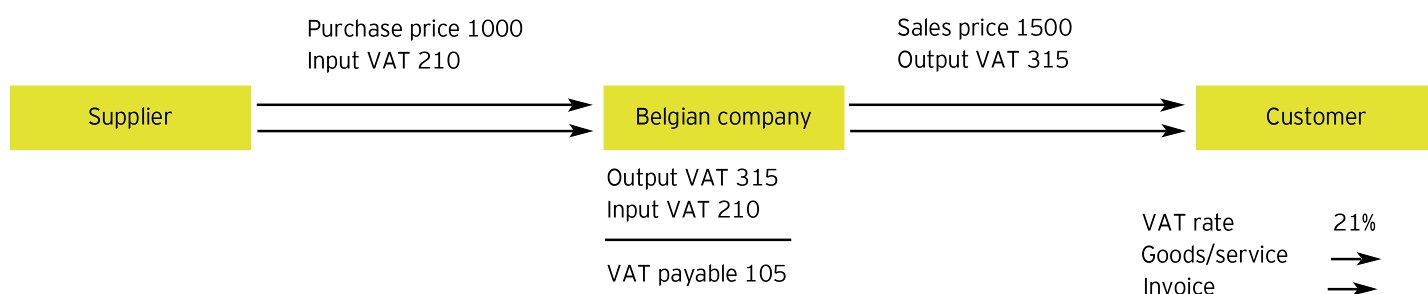
Advance certainty may be obtained from the Belgian Service for Advance Decisions in the form of an Advance Pricing Agreement (APA) covering transfer pricing and other tax matters. Armed with this knowledge, companies have full certainty about their future tax position for a specified number of years.

The APA procedure allows companies to obtain certainty (in advance) regarding tax treatment of both domestic and cross-border situations. APAs can cover a large aray of intercompany transactions, which may include unilaterally reviewing downward the taxbase of a Belgian company to align it with the arm's length principle as stated in the Belgian income tax code, and has been functioning successfully for a number of years. Unilateral, bilateral or multilateral APAs are available in Belgium. Pre-filing meetings with taxpayers to informally discuss the case before a formal APA request is made is allowed and processing time has been reduced.

5.3. VAT

5.3.1. Overview

VAT is a tax that is levied on a transaction basis throughout every stage of a supply chain. In general, output VAT is collected by a business from its customer by adding VAT to the amount charged. However a business also pays input VAT to its suppliers on purchases that it makes. The business must pay the output VAT to the tax authorities after deducting the input VAT paid to its suppliers. The business therefore pays VAT on the value that it adds in the supply chain. The VAT is ultimately borne by the end consumer or businesses that make supplies exempt from VAT, because they cannot recover input VAT paid.



5.3.2. Main supplies subject to VAT

If a business makes supplies that are subject to VAT, it generally must charge VAT to its customers. Examples of VAT taxable supplies are:

- Supplies of goods and services;
- Import of goods from a non EU country into Belgium;
- Certain purchases of goods and services from abroad, whereby the purchasing party must self assess the VAT in Belgium.

5.3.3. VAT exempt supplies

1. VAT exempt supplies (without right of deduction of input VAT)

If a business supplies goods or services that are exempt from VAT, it can, in principle, not recover any input tax paid on its purchases. Examples of such supplies of goods and services are:

- Certain financial services such as granting loans against interest payment, insurance services, etc.;
- Certain transactions (supply and or rental) of real estate;
- Medical services.

2. VAT exempt supplies with credit (with right of deduction of input VAT)

In some cases the business can make VAT exempt supplies and still recover input VAT. These supplies are qualified as "*exempt supplies with credit*". Examples of such VAT exempt supplies with credit are:

- So-called intra community supplies of goods;
- Exports of goods.

5.3.4. VAT rates

Three different VAT rates apply in Belgium:

- **21%**: This is the standard VAT rate that applies to most supplies of goods or services;
- **12%**: This is a reduced VAT rate that applies to specific supplies,such as restaurant services (drinks not included) and pay TV (non exhaustive list);
- **6%:** This is a reduced VAT rate that applies to specific supplies, such as hotel accommodation, books and certain foodstuff (non exhaustive list).

5.3.5. Calculation of output VAT

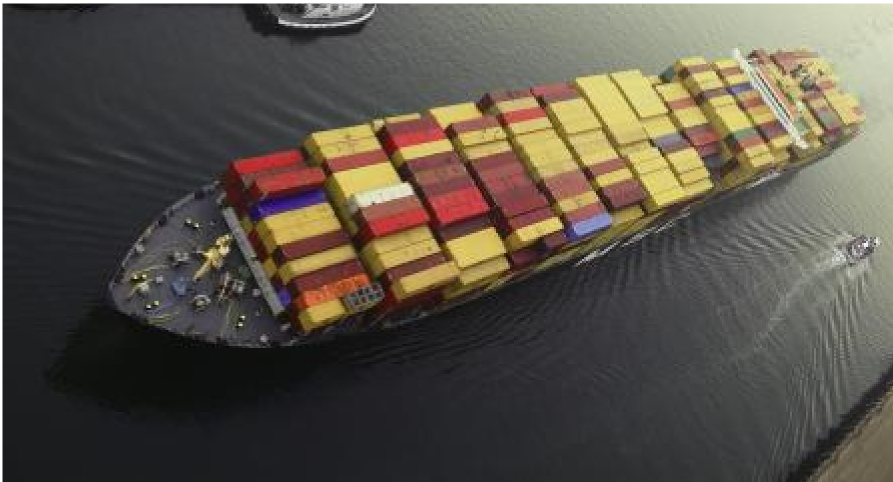
Output VAT to be charged by a business is calculated by multiplying the taxable basis (net of VAT) by the applicable VAT rate. With respect to imported goods, VAT is calculated on the import value plus the import duty (if any).

Price discounts generally reduce the value on which the VAT applies. However, certain types of discounts may not be permitted as a reduction before calculation of VAT. Various rules and conditions apply for application of the deduction for different kinds of discounts and promotions. Promotional goods (such as free goods) might under certain conditions subject to VAT based on the cost price of those goods.

5.3.6. Recovery of input VAT

A business can fully recover its input VAT which relates to its VAT taxable activities, if it has proper purchase invoices and or import documents as required for VAT purposes. Note that there is a restriction for a business to claim input VAT if the purchases of goods and services are not used for business purposes but for example for (partly or fully) private use of the employees of the business.

A business generally cannot recover its input VAT if it performs only VAT exempt supplies (we refer to point 5.3.3 1 in this respect). A business that performs both taxable and exempt supplies, can generally partly recover its input VAT. Special rules apply for calculating the partial VAT recovery percentage.

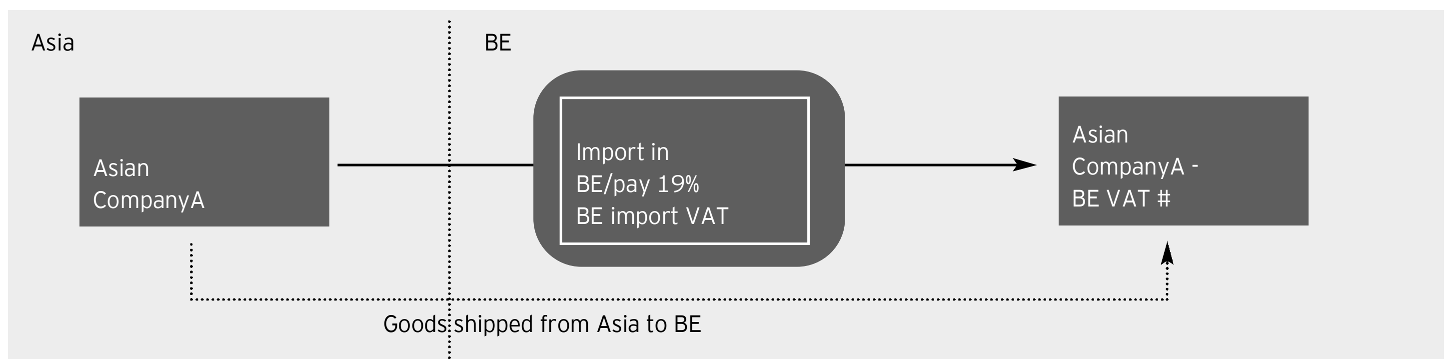


5.3.7. Key general European/BE VAT principles

1. Import

It refers to customs clearance of goods in Belgium for goods coming from outside of the EU (for example from China) by the importer of records:

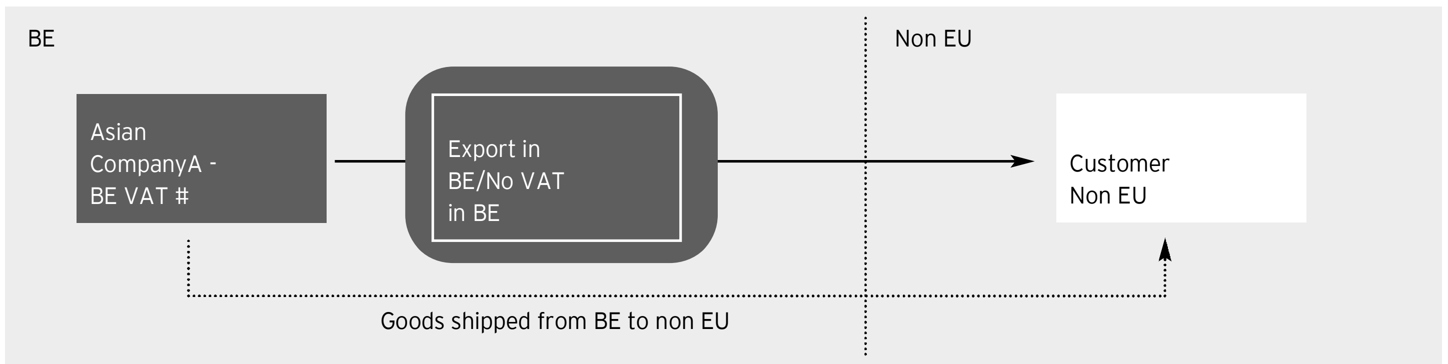
- BE Import VAT must be paid to the Belgian customs authorities;
- BE Import VAT paid can be recovered by the importer of records in its Belgian VAT return;
- If the importer of records has obtained for an import VAT deferment license (so-called E.T. 14.000 license) in Belgium, no import VAT actually must be paid to the Belgian customs. Instead the importer of records must self assess and report payable import VAT in its Belgian VAT return and in that same VAT return, it can reclaim the same VAT payable amount as a VAT recoverable amount;
- VAT documentation is required for imports, such as import declaration;
- Import customs formalities are required.



2. Export

It refers to supply of goods whereby goods are shipped from an EU country/BE to a country outside of the EU (for example China, USA, Norway, Switzerland or Russia):

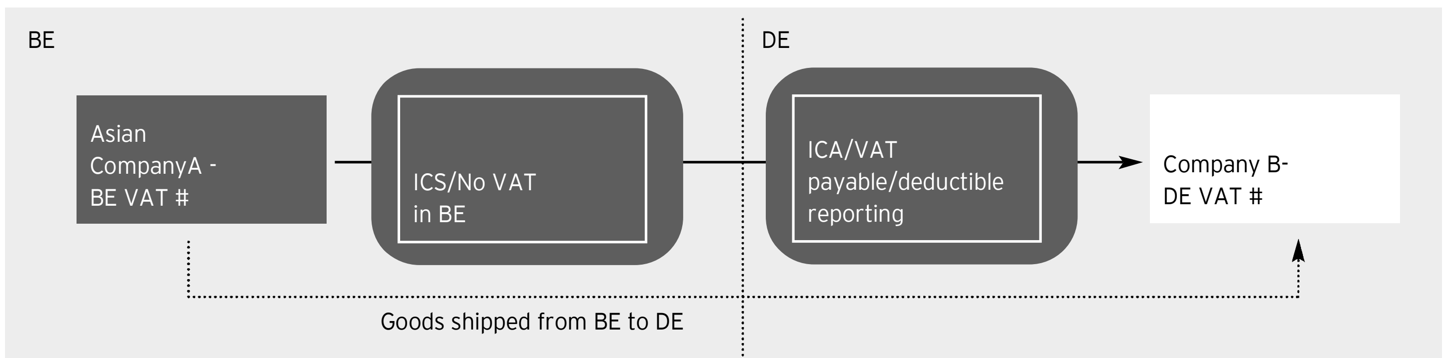
- Qualifies as an exempt supply with creditno VAT is charged;
- VAT reporting is required by the exporter of records;
- VAT documentation to exempt the export from VAT is required;
- VAT invoice requirement for export is required;
- Export customs formalities are required.



3. Intra-community supply

It refers to supply of goods whereby the goods are shipped from one EU country (for example: BE) to another EU-country (Germany):

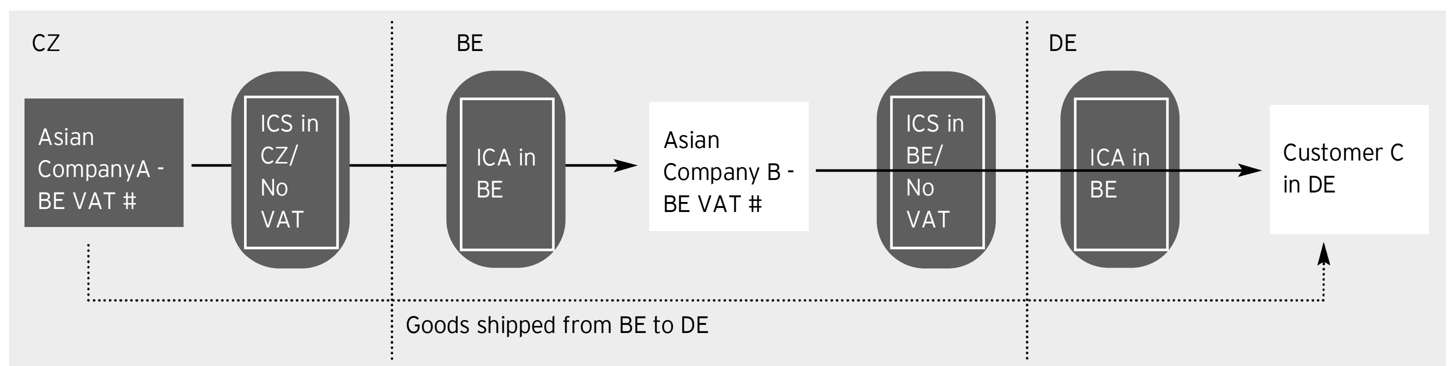
- Qualifies as an exempt supply with credit, no VAT is charged;
- VAT reporting is required by the supplier in the country of dispatch of the goods – intra community supply (ICS);
- VAT reporting is required by the customer in the receiving country – intra community acquisition (ICS);
- VAT invoicing requirements are strict;
- VAT documentation to support the VAT exemptionis required for the supplier (i.e. set of corresponding documents that proof that the goods left the EU country of departure).



4. Simplified triangulation supply

It refers to transactions between 3 parties (A, B and C), whereby A, B and C are VAT registered in three different EU countries. The supplies (invoices) are between A-B and subsequently B-C, but the goods are shipped directly from country A to country C:

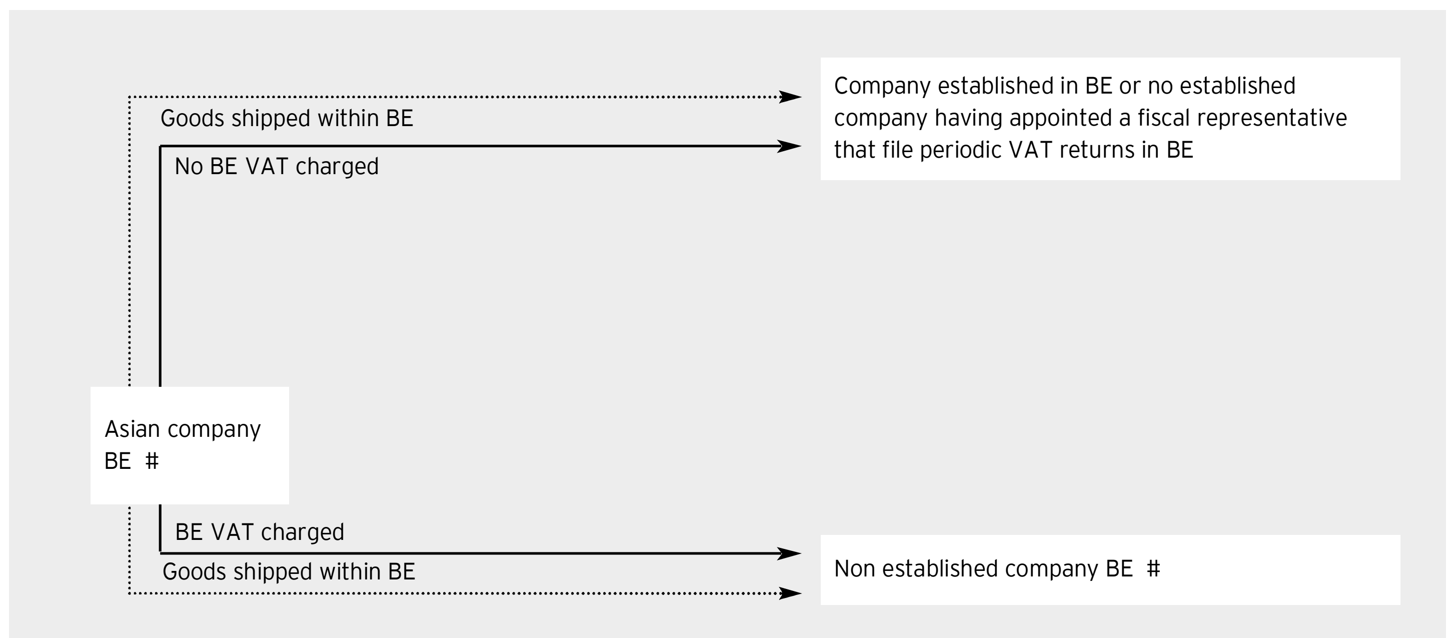
- No VAT is applicable between A-B and between B-C, if certain strict conditions are met;
- VAT reporting is required by A as an ICS to B;
- Specific VAT reporting is required by B in country B (purchase and sales transaction);
- VAT reporting of the purchase is required by C in country C (reverse charge of VAT);
- VAT invoicing requirements are strict;
- VAT documentation to exempt the supply from VAT is required by A and to certain extent by B.



5. Local supply of goods

It refers to supply of goods whereby the goods remain in the same country (BE).

- Local BE VAT applies or a so-called local reverse charge (= no VAT) applies, depending on the status of the supplier and the customer;
- The reverse charge rule applies to supplies made by nonestablished businesses to (i) taxable persons established in BE that file periodic VAT returns in BE, or to (ii) nonestablished businesses that are registered for VAT having appointed a fiscal representative in Belgium.



6. Supply of service

It refers to any supply other than supply of goods for which a business receives remuneration /consideration for:

- **Supply of local service**: service provided within one country, local BE VAT is due or the local VAT reverse charge (=no VAT) applies, depending on the nature of the service and the status of the supplier and customer (we also refer to point 5.3.7 5 in this respect)
- **Supply of cross border EU service**: service provided by service provider from one EU country (BE) to the service recipient in another EU county (DE): in most cases, no VAT is charged by the service provider while the service recipient (business) must report VAT under the so-called reverse charge mechanism. In some cases however, local VAT of the country of the supplier applies. This mainly depends on the nature of the serviceand the fact whether the recipient is considered as a VAT taxable person or not
- **Supply of cross border service outside of the EU**: service provided by an EU/BE service provider to a recipient outside the EU: in most cases, no VAT is charged by the service provider. In some cases however, local VAT of the country of the supplier applies (depending on the nature of the service, the fact whether the recipient is considered as a VAT taxable person or not and the local VAT legislation).

7. Purchase of goods

- **Cross border purchase**: this purchase could be either an import if the goods are dispatched from non EU/Asia to BE or it can be an ICA, if the goods are dispatched from an EU country outside of BE and arrive in BE. For both purchases, the VAT treatment is mentioned under import respectively Intra Community supply above
- **Local purchase**: this purchase is either subject to BE VAT, subject the so-called VAT reverse charge mechanism (see above) or VAT exempt.

8. Purchase of service

- **Purchase of cross border services**: this supply is in most cases subject to VAT in the country of the recipient (if the latter qualifies as a VAT taxable person – i.e. a "B2B" situation). In a B2B situation where the customer is established in another EU Member State, in most cases the reverse charge of VAT applies
- Purchase of local service: this supply is either subject to BE VAT or is subject to the local reverse charge mechanism (if the conditions are met) c.q. VAT exempt.

9. VAT reverse charge mechanism

Under the VAT reverse charge mechanism, a supply of good or service is not liable by the supplier, but instead the VAT must be self assessed by the customer. This means in practice that on the supply no VAT is charged by the supplier, but the customer must report the VAT payable on his purchase in his own VAT return and at the same time, recover the same amount of self assessed VAT as its input VAT in the same VAT return (assuming its recovery right is 100%).

5.3.8. Import VAT deferment license (so called 'E.T. 14.000 license')

A business (Belgian established or a non established) who acts as the importer of records can under certain conditions apply for the so-called import VAT deferment license (so-called E.T. 14.000 license) in Belgium. Under this import VAT deferment license, no import VAT actually must be paid to Belgian Customs but import VAT payable must be reported in the Belgian VAT return of the importer of records or its Belgian fiscal representative and in that same VAT return, the importer of records can reclaim the same VAT payable amount as a VAT recoverable amount based on its VAT recovery position. In order to apply this deferment license certain conditions need to be met (e.g. payment of a deposit).

5.3.9. A non established business

A 'nonestablished business' is a business that does not have a seat of business or a fixed establishment in Belgium.

VAT rules generally apply differently for non established business than for established business in the Netherlands.

5.3.10. VAT reporting requirements, deadlines and threshold in Belgium for 2010

Reporting	Monthly/Quarterly report?	Filing deadline?	Payment deadline?
VAT return	Monthly, if the yearly turnover exceeds EUR 1,000,000 or if intra-community supplies of goods are made for more then EUR 400,000 per year. For fraud sensitive goods (e.g. mobile phones, computers, …) a specific threshold of EUR 200,000 applies. VAT Payers not exceeding these thresholds can opt to file VAT returns on a quarterly basis. In such case, prepayments of VAT can be required.	‣ By the 20th day of the month following the relevant VAT period	‣ Same as filing deadline - the VAT payment must be received by the tax authorities on the date of the deadline ‣ Taxable persons that file quarterly returns must prepay the VAT monthly (on the 20th day of the second and third month of the VAT quarter) based on the amount of VAT payable in the previous quarter
EC listing for goods and services	Monthly, if monthly VAT returns are filed. Quarterly if quarterly VAT returns are filed, except when the threshold of EUR 100.000 for intra-community supplies (of goods) is exceeded in one of the four preceding quarters. If this is the case monthly EC listings need to be filed.	By the 20th day of the month following the relevant VAT period	NA
Statistical dispatch report/Intrastat	Monthly, if the value of EU cross border supplies of goods (goods move from BE to other EU countries) exceed the threshold of EUR 1,000,000	By the 20th day of the month following the relevant VAT period	NA
Statistical arrival report/Intrastat	Monthly, if the value of EU cross border purchases of goods (goods moved from other EU countries to BE) exceeds the threshold of EUR 700,000	By the 20th day of the month following the relevant VAT period	NA

5.3.11. VAT registration requirements in the Belgium

VAT registration requirements apply when:

- A business that is established in Belgium performs any of the following activities in Belgium:
  - Supplies goods and or services that are not VAT exempt (without right of deduction);
  - Intra community acquisitions in Belgium (if the company's other transactions fall within the category above, certain thresholds should be trespassed or an option should be levied);
  - Supplies of certain services to VAT taxable customers in other EU Member States;
  - Purchases of certain services from companies abroad for which the recipient is liable to deal with VAT.
- A non established business performs one of the following activities in Belgium:
  - Supplies of goods and services that are subject to Belgian VAT but are not subject to reverse charge VAT in BE;
  - Intra community acquisitions in BE;
  - Intra community supplies of goods from BE to other EU Member States;
  - Imports of goods from non EU countries, under certain conditions;
  - Distance sale in excess of the threshold.

In practice, the VAT registration procedure in principle takes four to eight weeks.

5.3.12. VAT invoicing requirements in Belgium

An invoice must be issued before the fifth day of the month following the month in which the supply takes place. A proper invoice must meet certain invoice requirements, such as supplier name, VAT number of supplier and recipient, customer name, etc. Businesses must retain its invoices for seven years. For real estate, the record period would be fifteen years. A VAT invoice is required to be retained for claiming input VAT or a VAT refund claim based on Directive 2008/9/EC (former 8th Directive) or the so-called 13th Directive refund claims. A VAT credit note may be used to reduce the VAT charged and reclaimed on a supply. It must be cross referenced to the originally issued invoice.

5.3.13. "9th" or 13th Directive VAT refund claim

In case a non established business in Belgium incurred VAT costs in the Belgium, and that non established business is not registered for VAT purposes in Belgium (and is not liable to do so), that business would in principle be allowed to recover the VAT incurred through a special refund claim procedure called the 9th Directive (Directive 2008/9/EC) refund claim (if that business is a EU established business) or the 13th Directive refund claim (if that business an Asian/non EU established business).

The deadline for filing the 9th Directive VAT refund claims with the Belgian tax authorities is on 30 September 2010 for the VAT incurred in the previous year (2009). For calendar year 2009 it is likely that an extension is granted until 31 March 2011. The 9th Directive refund claims (former 8th Directive) no longer need to be filed on paper but need to be filed through a portal website in the home country. Electronic copies of invoices in some cases need to be added (depending on the type of cost and the taxable amount of the invoice).

The deadline for filing the 13th Directive refund claim in Belgium is on 30 September 2010 for the VAT incurred in the previous year (2009).

5.4. Customs Duty

5.4.1. Overview

Companies importing goods into Belgium and /or EU may need to pay customs duties (not reclaimable costs). If your company starts doing business in Belgium and /or EU, it is important to identify the EU customs issues and consider potential opportunities for customs duty savings. This can be achieved mainly by the review of customs classification, customs origin, customs valuation as well as customs procedures.

5.4.2. Customs classification

For customs classification, potential customs duty savings may be obtained by re-classifying end products and looking at the classification of individual components. Improper or incorrect classification will impose the risk on companies of either paying too much duty or being subject to customs fine. With over 14,000 possible classifications and the wide range of tariff rates from 0% of duty to 50% or even higher in the case of anti-dumping duty, it is important that companies undertake regular customs reviews and take advantage of the most appropriate and beneficial classification headings for the products. Based on the request of the company, a legal instrument called binding tariff information (BTI) can be given to ensure the application of a favorable customs classification. On the next page is a general indication of the duty rates in the EU.

Type of goods	CN-code	Duty rate – minimum	Duty rate – average	Duty rate – maximum
Consumer electronics	8501/8548	0%	5%	14.00%
Automotive (cars, parts)	8701/8716	0%	10%	22%
Optical devices	9001/9033	0%	4%	6.70%
Toys	9501/9508	0%	3%	4.70%
Alcohol	2203/2208	EUR 0/hl	EUR 9.90/hl	EUR 32/hl
Fertilizers	3101/3105	0%	4.80%	6.50%
Cosmetics	3301/3406	0%	4%	13%
Chemical products	3801/3825	0%	5%	6.50%
Plastics	3901/3926	0%	5%	6.50%
Silk/wool/synthetics	5001/5516	0%	5%	8%
Clothing	6101/6301	2%	10%	12%
Shoes	6401/6406	3%	10%	17%
Metals	7201/8311	0%	3%	7.50%

5.4.3. Customs origin

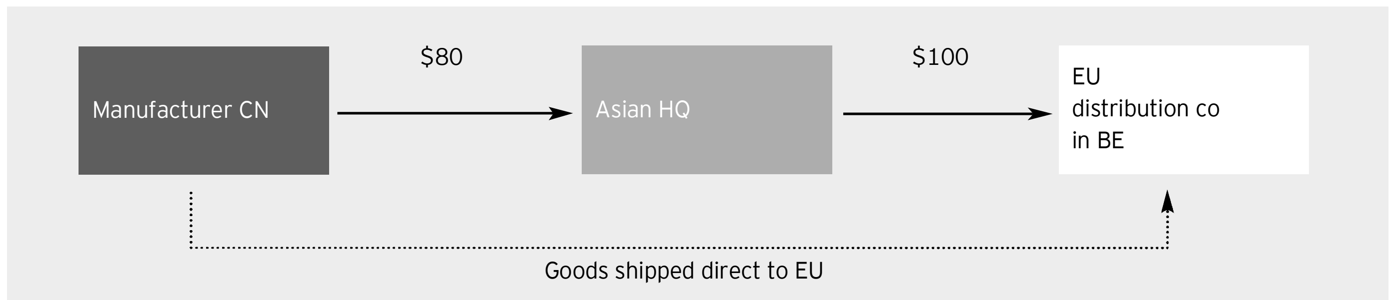
Different rates of duty will apply depending on the origin of the goods for customs purposes. On the one hand, some products with a certain origin may attract a high rate of customs duty in the EU and be subject to anti-dumping measures and tariff quotas. On the other hand, it may be possible that duty rates may be significantly reduced even to zero, for example based on preferential trade agreements. It is thus important for companies to review the preferential and non-preferential origin of goods properly and prepare necessary documents to substantiate its claim. Improper or incorrect identification of origin will impose the risk on companies of either paying too much duty or being subject to customs fine.

5.4.4. Customs valuation

For customs valuation, customs value is most likely based on the so-called transaction value (i.e. the price actually paid for imported goods, normally based on the invoice price). Depending on the manufacturing and invoice process in Asia, it may be possible to look for an "earlier sale" upon which to base the customs value. This may lead to a lower customs value and duty bill.

Example

An Asian headquarters (HQ) purchases goods from a manufacturer in China. The goods have been specifically designed and manufactured for the European market. The Asian HQ then sells the goods to a related EU distributing company located in Belgium. This distributing company is the importer into the EU. If certain legal requirements are met, customs duty can be calculated based on 80 rather than 100, and thus save import duties on the price difference of 20.



5.4.5. Other customs planning

Further customs duty saving can be realized by using one or a combination of more than one duty planning procedure so that payment of import duties and VAT may be postponed, and unnecessary overpayment of duties can be avoided. Examples of other customs plannings are:

- Customs warehousing;
- Inward processing relief (IPR);
- Outward processing relief (OPR);
- Processing under customs control (PCC).

5.4.6. Authorized Economic Operator (AEO)

The European Community provides for an AEO certificate for EU established companies which perform customs activities. This certificate is issued to whom is reliable throughout the Community in the context of his customs related operations, and, therefore, is entitled to enjoy benefits throughout the Community. An AEO certificate provides either an easier admittance to customs simplifications, or it entitles the holder to facilitations concerning security and safety controls. In addition, there are benefits which are open to all categories of AEO, such as, amongst others, fewer physical and document based customs controls (unless other Community legislation prescribes a fixed amount). Economic operators can also request a joint certificate ("*customs simplifications*" together with "*security and safety*") comprising all benefits referred to above.

5.4.7. Import VAT

Generally speaking, Value Added Tax (VAT) is a consumption tax on goods and services. It applies more or less to all goods and services that are bought and sold for use or consumption in the Community.

In Belgium, operators performing an import and subsequent supply do not require an individual Belgain VAT registration as such. These transactions can be reported to the Authorities by means of a so called global VAT number provided for by an expeditor/customs broker. This VAT number will be applied by the expeditor/broker to report transaction for many of its clients.

This system, which is not foreseen in many Member States, can avoid that a Company has to obtain a VAT number and conduct the bookkeeping that comes along with it.

5.5. Individual Tax (HC)

5.5.1. Tax liability of residents versus nonresidents

Individual Income tax is imposed on resident and non-resident employees. Residents of Belgium are taxed on their worldwide income, while non-residents are taxed only on income from Belgian sources. Additional tax deductions can be claimed by certain non-resident tax payers, who qualify for the special taxation regime for foreign executives, specialists and researchers.

Whether a person is a tax resident of Belgium is determined by all facts and circumstances. Decisive is where a tax payer and his family members have their centre of economic and vital interests. The main criteria to be considered are family home, registration with the communal w authorities, physical presence, the duration of the individual's activities in Belgium and the overall economic and social relationship of the individual with Belgium. The nationality of the individual is of no importance in determining his or her residence.

Residency is always determined at family level. Therefore married tax payers or persons, who are legally co-habitant, will always be subject to the same residency status. In addition, these persons will mostly file joint Belgian income tax returns.

If an individual is considered as a resident simultaneously by China and Belgium, he may be exposed to double worldwide taxation. Dual tax residency always leads to a risk of international double taxation so special attention will be needed to the clauses of the China-Belgium tax treaty to try to avoid that negative tax consequences would arise.

5.5.2. Taxable income

For Belgian income tax purposes, taxable income is categorized in four groups. Each type of income has its own rules for the calculation of taxable income, the applicable tax rates and exemption rules.

- **Group 1**: taxable income from professional activities (as employee, director, self employed person, retired person, etc ….);
- **Group 2**: taxable income from the ownership of real estate (land and buildings);
- **Group 3**: taxable income from savings and investments (interest income, dividends, etc …);
- **Group 4**: other taxable items, as defined in the Belgian income tax code.

Group 1 – professional income	Group 2 – real estate income	Group 3 – income from savings and investments	Group 4 – other taxable items
• Salary (including company car and other employee benefits), pension payments, social benefits; • Director fees; • Profits from business/self-employed activities.	• Owner-occupied property (primary residence); • Property (land and or buildings) which is rented to third parties.	• Income from shares and profit-sharing certificates; • Interest earned on bonds or on bank accounts.	• Income from occasional (non professional activities); • Income from sub-leasing of property; • Alimony payments.

5.5.3. Deductible expenses

Business related expenses can be deducted from taxable professional income. In case no itemized expense items can be identified and justified, the tax payer is entitled to a deductible standard cost allowance.

Mortgage interest and annuities, paid for the acquisition, maintenance or improvement of the primary residence is tax deductible, but only up to an annual ceiling. Income from a second home or rental income is, in principle, taxable.

Other deductions are available, for example premiums for certain annuities (private pension), alimony payments to former spouse and children, certain gifts to qualifying institutions.

5.5.4. Tax rates

1. Professional income and real estate income (groups 1 and 2)

The rate for professional income is progressive, which is subject to change on an annual basis. The following table shows the tax rates applied in 2010.

Bracket	Taxable income from employment and from real estate	Income tax rate (to be increased with communal tax)	National insurance contributions (for employees) – contributions are deductible from taxable income
1	Up to EUR 7,900	25%	13.07%
2	EUR 7,900 to EUR 11,240	30%	13.07%
3	EUR 11,240 to EUR 18,730	40%	13.07%
4	EUR 18,730 to EUR 34,330	45%	13.07%
4	EUR 34,330 and higher	50%	13.07%

The tax, calculated based on the above mentioned rates is increased by a communal tax, which is calculated on the amount of tax due. For resident tax payers, the communal tax rate is calculated at the rate determined by the commune where the tax payer lives (0 to approximately 9%). For non-resident tax payers, the rate is fixed at 7%.

There is no treaty on social security between Belgium and China. Under certain conditions, Chinese employees, who keep a direct employment link with the Chinese parent company, may qualify for exemption from Belgian social security.

Above, the social security rate for employees is indicated. For remunerated directors of companies and other self employed persons, social security contributions will be calculated under the system for self employed individuals. While there is no income ceiling for the calculation of social security for employees, an income ceiling exists for the calculation of social security contributions for self employed persons.

2. Group 3 – income from savings and investments

Interest income from bonds and bank accounts is taxed at a fixed rate. In most cases, the applicable rate is fixed at 15%. In case the interest is collected from a Belgian financial institution, the tax will be deducted at source.

Dividends from shares are also taxed at a fixed rate of either 15 or 25%, depending on the type of income. In case the dividend is collected from a Belgian financial institution, the tax will be deducted at source.

Capital gains on the sale of shares or on the sale of private assets is in most cases exempt from taxation.

3. Group 4 – other taxable items

Other taxable items may be taxed either at specific fixed rates or at the progressive tax rates, mentioned above.

5.5.5. Tax credit and relief for losses

The tax due will be reduced by tax credit(s) and losses, which can be carried forward from the prior income years. There is no carry-back of tax credits or losses.

5.5.6. Double tax relief

For a Belgian resident individual, when he derives income from other countries and has to pay tax on that income in that country (e.g. a self-employed entrepreneur or an employee as well), relief for double taxation will be, in principle, applicable on the basis of the double tax treaties Belgium has concluded (e.g. the treaty with China) or the Belgian internal rules for reduction of double taxation (in case there is no tax treaty).

5.5.7. Special taxation regime for foreign executives, specialists and researchers

Chinese expatriates in Belgium may qualify for a Belgian special tax facility, the 1983 tax ruling for foreign executives, specialists and researchers. This facility enables an employer to pay an employee a tax-free allowance of up to EUR 11,250 (base amount) or EUR 29,750 (increased amount in special cases) of current employment income.

In addition, certain expatriate allowances are tax exempt without limits, such as school fees for children attending international schools, moving and relocation expenses.

Persons, who qualify for the special tax status are always treated as non-residents of Belgium and are not taxed on any income, relating to work days spent outside Belgium (so-called business travel exclusion) and are also not taxed on interest and dividend income from non-Belgian sources.

There is no formal maximum period for the special expatriate tax regime, though in principle the system can not be used for an unlimited period of time. The entitlement to the special tax regime may be limited due to previous stays (business or other) in Belgium.

To qualify for the special tax facility, certain conditions must be met, including the following:

- The employee must be recruited or assigned from abroad to temporarily work in Belgium;
- The employee must prove that he keeps the center of personal and economic interests outside Belgium;
- The employee must have a managerial function, be a specific expert or a researcher.

Please note that the special tax regime should be formally applied for by both the employer and the employee within six months after the end of the month during which the employee comes to Belgium.

Example of the tax savings under the special tax regime

A Chinese expatriate who is assigned to Belgium earns a gross employment income of EUR 7,500 per month in 2010. He rents a house in Belgium with a monthly rent of EUR 600. He spends 35% of his professional time on business travel outside Belgium. The following are the 2010 Belgian tax calculations for the expatriate, excluding and including the special tax regime. The tax payer is married (non working spouse) and has one dependent child.

We also included the benefit of exemption from employee social security contributions for the example of the expatriate, who qualifies for the special taxation regime.

	Without special tax regime (€)	With special tax regime and exemption from Belgian social security (EUR)
Taxable income from employment	90,000.00	90,000.00
Minus: Employee Insurance contributions	(11,703.85)	(0)
Fiscal wages before expatriate deductions	78,296.15	90,000.00
Minus: standard expatriate allowance		(11,250.00)
Subtotal	78,296.15	78,750.00
Minus: 35% foreign business travel exclusion		(27,562.50)
Taxable income (before business expenses)	78,296.15	51,187.50
Income tax due	(31,573.58)	(18,131.72)
Communal tax due (7% rate)	(2,210.15)	(1,269.22)
Special social security contribution	(731.29)	(0)
Total tax and social security due	(34,515.02)	(19,400.94)

5.5.8. Tax return

Income tax on salaries and wages is, in principle, collected by means of withholding payments via a Belgian payroll administration (assuming that all conditions are met) or by means of voluntary tax prepayments. The wage tax and the tax prepayments are advance levies for the income tax.

In the case the employee owes more tax than is withheld or prepaid, he has to pay the difference after the filing of the tax return. If tax is overpaid, he will receive a tax refund. In any case, the individual is obliged to file a Belgian income tax return after the end of the income year.

6. Accounting principles and requirements

6.1. Overall organisation

In 1975 the Belgian Accounting Legislation was introduced for public companies and later on was integrated in Belgian Company Law. The Belgian Accounting Standards (or BAS) are developed by the Belgian Accounting Standards Board (BASB).

BASB sets the regulations and monitors all other (legal) requirements and court decisions, which govern annual accounts and directors' reports as required by law. BASB also considers the International Financial Reporting Standards (IFRS) as endorsed by the EU when designing the Belgian Accounting Standards.

There are many differences between Belgian GAAP (Generally Accepted Accounting Principles) and IFRS. In general, Belgian GAAP is more 'principle based' as compared to IFRS and consequently, Belgian GAAP allows more interpretative accounting alternatives to be adopted. The format of the financial statements under Belgian GAAP is fixed, but disclosure requirements under Belgian GAAP are less extensive.

The law requires the appointment of at least one statutory auditor when the company is a "*large*" company, as defined by the law. The title of auditor in Belgium is regulated by and protected by law and the profession is organized by the Belgian Institute of Certified Public Accountants. The audit profession is also regulated by the Banking, Finance and Insurance Commission (CBFA), which is responsible for supervising the operation of the financial markets.

The International Accounting Standards (IAS) regulation requires companies listed in Europe to prepare consolidated financial statements in accordance with the International Financial Reporting Standards (IFRSs) as adopted by the European Union (EU). Non-listed companies, established in Belgium, have to prepare their financial statements based on Belgian Generally Accepted Accounting Principles.

6.2. Financial Statements

The size of a company is decisive for the format and related legal requirements, which are applicable on the financial statements. There is a fixed basic format of the financial statements to be used in Belgium and distinction is made between a short and a long format, whereby the long format applies to large companies and requires more disclosures to be made.

The parameters to determine whether a company falls under the definition of a 'large company' are the following:

Non consolidated financial statements	Size
Total assets	> EUR 3.65 million
Net revenu	> EUR 7.0 million
Number of employees	> 50 employees

A legal entity is considered to be a 'large company', when

1. Two or more of the above mentioned criteria are met;
2. More than 100 people are employed by the company;
3. The company is part of a group, which has to draw up consolidated annual accounts and which meets the conditions mentioned below on a consolidated basis.

Consolidated group	Size
Total assets	> EUR 14.6 million
Net revenu	> EUR 29.2 million
Number of employees	> 250 employees

6.2.1. Contents of the financial statements

Companies have to prepare their financial statements in accordance with the Belgian accounting principles, which are also used as the basis for the company's corporate tax declaration. Listed companies are obliged to prepare their consolidated financial statements under IFRS.

Financial statements are to made up in a fixed format and consist of the balance sheet, the income statement, the allocation of the result, disclosures, a 'social' balance sheet, annual report of board of directors to the shareholders and, where applicable, the auditors' report.

1. Balance sheet

All assets, liabilities, provisions and reserves have to be entered under the appropriate headings of the fixed format of the balance sheet. A distinction is made between current assets, non-current assets, current liabilities and non-current liabilities. Figures are to be mentioned for the current accounting period together with one year comparative figures. Off-balance sheet items are disclosed separately in the accounts.

2. Income statement

All income and expenses have to be reported under the appropriate sections in the fixed format of the annual accounts. An entity presents its operational result, financial result, extra-ordinary results, taxes, net result after taxes and the allocation of the net result. Figures are to be mentioned for the current accounting period together with one year comparative figures.

3. Cash flow statement

The cash flow statement indicates the cash flows resulting from operations, investments and financing activities, performed during the financial year. This statement provides and understanding in the orgin and spending of cash. In Belgium, only listed companies have to report a cash flow statement in their consolidated financial statements under IFRS.

4. Statement of changes in equity

This statement holds an overview of all direct changes in equity, which do not result from the profit and loss accounts. The statement provides an understanding of any direct equity changes and provides reconciliation between changes in equity through the both profit and loss accounts and changes resulting from direct equity movements during the year. In Belgium only listed companies have to include a statement of changes in equity in their consolidated financial statements under IFRS.

5. Notes to the financial statements

The notes are an integral part of the financial statements and are also to be made up in a fixed format. The notes contain disclosure of all significant accounting policies of the reporting entity. Other notes usually presented include details of movements in property, plant and equipment, share capital, reserves, analyses of loans payable and inventory balances, disclosures of commitments and contingencies, and details of various categories of expenses.

6. Social balance

The social balance is an integral part of the financial statements consists of 3 parts:

(i) Information on the number of employed staff at the closing date;

(ii) The evolution of employed staff compared to previous year;

(iii) Information concerning education and training of employees.

The information includes a break down based on employee gender and also includes information on full/part time employment of staff and on the use of temporary staff. Only employees, paid out through a Belgian payroll are included in the social balance.

Information on expatriate staff is not to be included in the social balance.

7. Directors' report

The management board members must prepare an annual report to the shareholders. The report is part of the financial statements and needs to be aligned with the financial statements. A directors' report is not required for small, non-listed companies.

The directors' report contains at least the following information:

(i) A fair overview of the financial situation of the company during the year;

(ii) A description of the main business risks and uncertainties that the company faces;

(iii) Information about significant post balance sheet events;

(iv) Information about circumstances that could have a significant impact on the future development of the company;

(v) Information on research and development activities;

(vi) Confirmation of the going-concern of the company in case the balance sheets shows losses carried forward or two consecutive years of losses;

(vii) Use of branches;

(viii) Use of certain financial instruments.

6.2.2. Legal requirements related to the financial statements

The financial statements are prepared by the board of directors together with their annual Director's report. These documents are submitted to the annual shareholders' meeting for approval within six months after the closing date. The general meeting of shareholders can postpone the approval of the financial statements if needed. There is at least once a year an annual shareholders' meeting where the shareholders can approve the statutory annual accounts, (re)-appoint directors and if applicable the statutory auditor and make decisions as required by law or the by-laws of the company. The shareholders may also meet in additional meetings when special decisions are to be taken.

The financial statements must be issued in the official language of the region, where the Belgian registered seat of the company is located. One of the following three languages may need to be used: Dutch, French or German. No use can be made of other languages.

The financial statements have to be prepared in EURO, but is is possible that the underlying operational currency of a businesses differs from the EURO. It is possible to request approval from the competent Minister to keep the books in a currency, which is different from EURO.

Management's responsibility for the proper preparation of the annual accounts, includes

- The obligation for the selection and application of appropriate accounting policies;
- The design, implementing and maintenance of a system of internal control, which is relevant to the preparation and fair presentation of the financial statements. This system of internal control should ensure that the accounts do not contain any material misstatement, whether due to fraud or error;
- Making accounting estimates that are reasonable in the applicable circumstances.

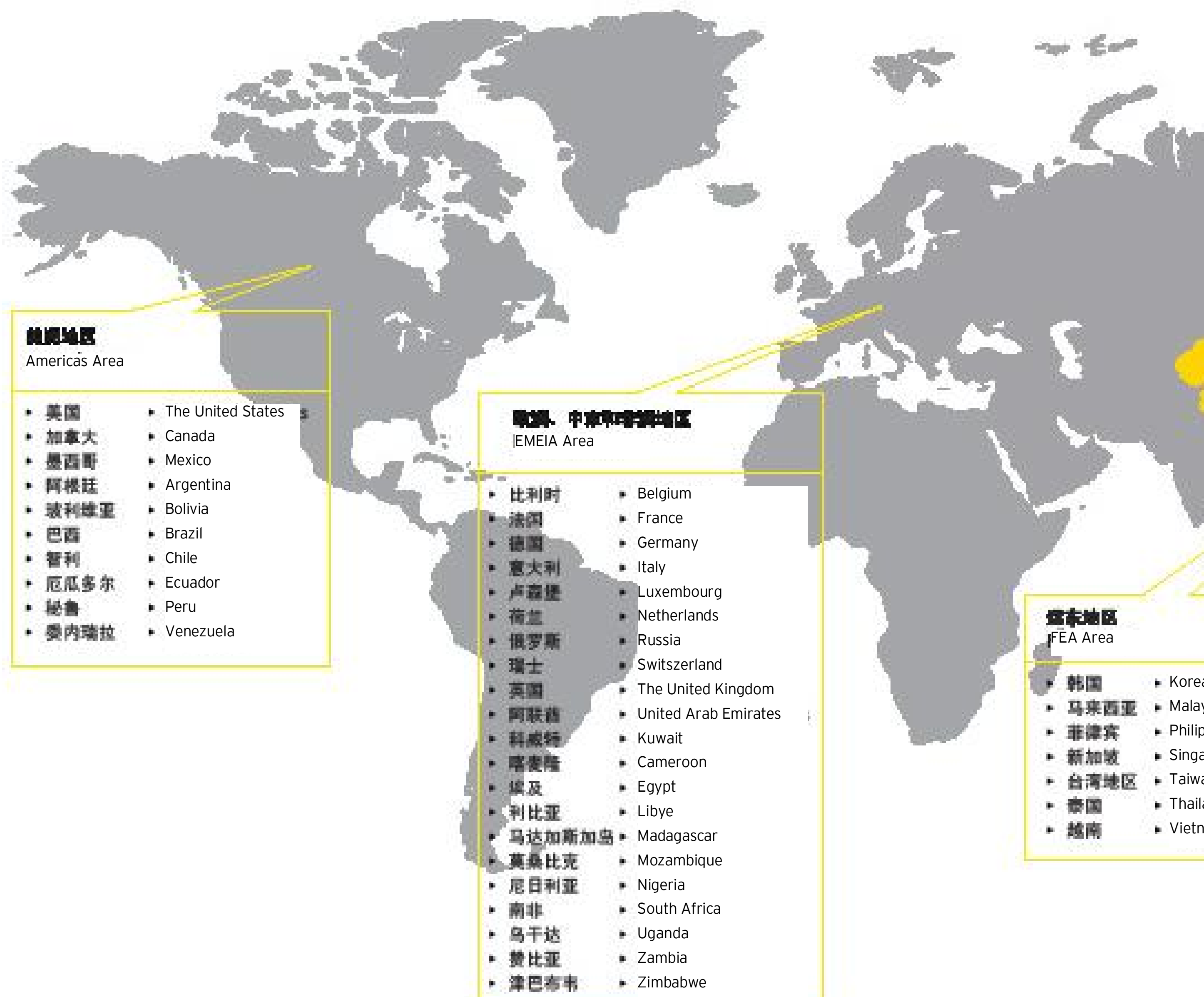
6.2.3. Filing of financial information at the National Bank of Belgium

The financial statements, as approved by the shareholders, must be filed with the National Bank of Belgium. The filing of the annual accounts is to be completed within one month after the annual shareholders' meeting, that approved the financial statements and within seven months after the closing date.

7. China Overseas Investment Network

The China Overseas Investment Network (COIN) is part of Ernst & Young's commitment to provide seamless and high-quality client service, worldwide, to Chinese companies going overseas and doing business overseas. Our globally integrated structure enables us to deploy dedicated teams with strong local experience, and profound industry knowledge to provide seamless services to our clients.

COIN links Ernst & Young professionals around the globe, facilitates collaboration, and provides consistent and coordinated services, to our clients with overseas investment from and into China. Building on the existing China Business Group in Ernst & Young's Americas, EMEIA ("Europe, the Middle East and Africa") and Oceania areas, COIN has expanded our network in over 40 countries and territories around the world.



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