

SETTING UP BUSINESS IN BELGIUM



General Aspects

The Kingdom of Belgium is situated in Western Europe, bordered by the Netherlands, Germany, Luxembourg, France and the North Sea. As it is part of Euroland, its monetary unit is the Euro. Although its surface area of 30,500 square kilometres makes it a small country, its geographical positioning makes it one of the most accessible countries in Europe to the continent's largest markets. Belgium is the economic and political centre of Europe, hosting the headquarters of the European Union as well as those of other major international institutions, including NATO. The total population is around 10.7 million people. Belgium is divided ethnically into the Dutch-speaking Flemings and the French-speaking Walloons, the bilingual capital of Brussels and the 70,000 residents of the eastern German speaking cantons.

Legal Forms of Business Entities

Legal form	Feature	Remarks
A. Branch Office	An extension of a non-Belgium parent company. Has no legal personality, but is part of the legal entity of the foreign company. All responsibilities for any liabilities in Belgium lie with the foreign company. There is no (minimum) capital required but the parent company has to invest the necessary amount of money to carry out the business in Belgium.	Suitable for foreign companies looking for a presence in Belgium to initiate business. A branch can be opened quite simply, but the costs for translating all the documents should not be underestimated.
B. Sole Proprietorship	Set up by a single natural person, who is fully and personally liable for the debts of the company. The sole trader has to be of European nationality or hold a professional card.	Suitable for small businesses and start-ups. Because it consists of a single individual (the founder), the Company's assets are not separate from those of its founder, who has unlimited liability for any debts. When individuals register with the Crossroad Bank for Enterprises, they must provide their spouse's full details as well as the place and date of the marriage and the matrimonial regime chosen. Where appropriate, the date of divorce must also be provided, as well as any ruling resulting in separation of the couple's property. The spouse may or not be jointly and severally liable for the Company's debts, depending on the matrimonial property regime chosen.
C. Partnerships There are the following partnerships in Belgian law:	Partnerships require at least two partners with a personal commitment. Their liability for the partnership's debts and liabilities is generally unlimited and personal.	No minimum share capital is required and the accounting and publication obligations are less extensive than those for corporations. Partnerships are far less common in Belgium than in other countries.

<p>C1. Ordinary limited partnership (V.O.F. - Vennootschap onder firma / SNC - Société en Nom Collectif)</p>	<p>Advantages</p> <ul style="list-style-type: none"> • No notarial deed required: private deed is sufficient; • Private nature of the Company: shares cannot be transferred without the agreement of the other partners; • Limited disclosure requirements; • No required minimal capital; • Work done by the partners can counts as "contribution". 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Partners are jointly and severally liable; • Business documents must state that Company is SNC/VOF; • If Company goes bankrupt, the partners are may also declared bankrupt.
<p>C2. Partnership limited by guarantee (Comm. V. - Gewone Commanditaire Vennootschap/ SNC - Société en Nom Collectif)</p>	<p>A legal form related to the General Commercial Partnership, but with the option of limiting the liability of some of the partners.</p> <p>The Managing partners are personally and jointly liable without limitation, as well as with their private assets. The liability of the limited partners is limited to their respective share of the partnership capital.</p>	<p>Suitable for medium-sized companies seeking additional start-up capital from persons who prefer a limitation of liability.</p> <p>Advantages</p> <ul style="list-style-type: none"> • No required minimal capital • No notarial deed required: private deed "onderhandse akte" is sufficient • Private nature of the Company: shares cannot be transferred without the agreement of the other partners; • Limited disclosure requirements; • Work done by the partners can counts as "contribution"; • Limited liability of the limited liability partners; • Share of loss is limited to the amount of their contribution. <p>Disadvantages</p> <ul style="list-style-type: none"> • Partners are jointly and severally liable; • Business documents must state that Company is Comm.V/ SNC; • Bankruptcy of the Company implies bankruptcy of the managing partners • If one of the limited liability partners behaves like a managing partner and/or performs administrative acts, he will bear jointly and severally liability
<p>D. Cooperative Companies (CV Cooperatieve Vennootschap/ SC Société Coopérative) There are the following Cooperative Companies in Belgian Law :</p>	<p>This company form is very flexible. At least three partners are needed for the constitution. Private and legal persons can be shareholders.</p> <p>The cooperative Company is made up of partners, whose number and contributions may vary.</p>	<p>This form is suitable for small and medium sized businesses and family businesses, because there are only few legal regulations.</p>

<p>D1. Cooperative Company with Limited Liability</p> <p>(CVBA - Coöperatieve Vennootschap met Beperkte Aansprakelijkheid; SCRL - Société Cooperative à Responsabilité Limitée)</p>	<p>The liability of the shareholders is limited to the amount each contributed.</p> <p>The minimum amount of capital is:</p> <ul style="list-style-type: none"> • a fixed part of at least EUR 18,550, with a minimum paid-up of EUR 6.200 • a variable part, which varies with the entry and exit of partners. <p>Legally:</p> <ul style="list-style-type: none"> • A financial plan must be drawn up; • Must comprise at least three people; • Special account must be opened in the Company's name during the set-up phase in case of cash contributions; • Auditor's report is required in case of contributions in kind
<p>D2. Cooperative Company with Unlimited Liability</p> <p>(CVOA - Coöperatieve Vennootschap met Onbeperkte Aansprakelijkheid; SCRI - Société Cooperative à Responsabilité Illimitée)</p>	<p>Shareholders are unlimited liable for the company's debts. An amount of money is contributed to the company that is fixed by the articles of association, there is no minimum legal requirement.</p> <p>The capital is divided into:</p> <ul style="list-style-type: none"> • a fixed part defined in the articles of association • a variable part. <p>Legally:</p> <ul style="list-style-type: none"> • Financial plan is not compulsory • Must comprise at least three people; • Articles of incorporation may also take form of notarial deed, but this is not compulsory; • Special account must be opened in the Company's name during the set-up phase in case of cash contributions; • Auditor's report is not required in case of contributions in kind.
<p>E. Corporations</p> <p>There are the following Corporations in Belgian Law:</p>	<p>Independent legal entities, meaning that the holder of rights and obligations is not the individual shareholder, but the company itself. Shareholders are only liable for company's debts to the amount of their capital share.</p> <p>To incorporate a company the articles of association and the required documents have to be filed with the Court of Commerce and published in the Belgian Official Gazette.</p>
<p>E1. Public Limited Company</p> <p>(NV - Naamloze Vennootschap/ SA Société Anonyme)</p>	<p>The minimum share capital of a Public Limited Company is EUR 61,500, which has to be fully subscribed and paid up by the founding shareholders. There have to be at least two shareholders which can be a legal entity or a physical person.</p> <p>Advantages</p> <ul style="list-style-type: none"> • Liability of the shareholders is limited to their contribution; • Bearer securities are transferable <p>Disadvantages</p> <ul style="list-style-type: none"> • High starting capital; • High founding costs • Substantial accounting and publication obligations; • Notarial deed and financial plan must be drawn up; • Family business aspect is lost; • Shares are always registered until they are fully paid up

<p>E2. Private Limited Liability Company (BVBA - Besloten Vennootschap met Beperkte Aansprakelijkheid/ SPRL - Société Privée à Responsabilité Limitée)</p>	<p>Is similar to a Public Limited Company. Main differences: Can be established by one (see below) or more shareholders. The minimum capital which must be fully subscribed at the time of constitution is EUR 18,550 and paid up to the extent of one third (EUR 6,200).</p>	<p>This form is suitable for small and medium-sized enterprises and family businesses.</p> <p>Advantages</p> <ul style="list-style-type: none"> • Liability of the shareholders is limited to their contribution; • Lower starting capital; • Lower accounting and publication requirements • Suitable for small and medium-sized companies and family businesses <p>Disadvantages</p> <ul style="list-style-type: none"> • Notarial deed and financial plan must be drawn up; • No bearer shares
<p>E3. One-person Private Limited Company</p>	<p>Variation on the BVBA/ SPRL, but this can be set up by just one person and only have one shareholder. Main differences to the BVBA:</p> <ul style="list-style-type: none"> • Minimum amount is still EUR 18,550 but the minimum paid-up capital is EUR 12,400. • Only a natural person can be shareholder 	<p>This form is suitable for small and medium-sized enterprises and family businesses.</p>
<p>E4. Partnership limited by shares (Commanditaire Vennootschap op Aandelen/ SNA - Société en commandite par actions)</p>	<p>At least one partner, the general partner, has to be liable for debts and liabilities of the company without limitation. The general partner can also be a corporation with limited liability. An unlimited number of capital investors (limited shareholders), whose liability is limited on the capital contribution they subscribed. The partners' shares are freely negotiable. The minimal capital is EUR 61,500.</p>	<p>The partnership limited by shares combines structures of a Public Limited Company and a limited partnership.</p>



<p>E5. Starters Private Limited Company (S-BVBA = Starters BVBA, SPRL “STAR-TERS”)</p>	<p>Variation (since June 1st 2010) of the Private Limited Company. Legislation of the Private Limited Company is applicable unless exception in the Corporate Law. This form of cooperation appears to be not very popular for the reason that the starters private limited company must be transformed in another form within five years after its creation</p>	<p>Advantages</p> <ul style="list-style-type: none"> • Liability of the shareholders is limited to their contribution; • Low starting capital as from EUR 1 till EUR 18.549: not necessary to have an important capital at the start of the Company; <p>Disadvantages</p> <ul style="list-style-type: none"> • Notarial deed must be drawn up; • Capital has to be increased to EUR 18.550 within a period of 5 years’ after incorporation or when the employee total exceeds 5 persons; • Founders have to be physical persons and cannot be shareholder for more than 5% of another Company; • Unlimited liability for the difference between EUR 18.550 and the capital of the Company; • Financial plan is needed and has to be drawn up together with an accountant; • A legal reserve of minimum 25% of the result of the year has to be build up.
<p>E6. Non-profit organization (VZW - Vereniging Zonder Winstoogmerk en ASBL - Association Sans But Lucratif)</p>	<p>A non-profit organization consists of at least three people and pursues a non-profit making objective.</p>	<p>Unlike the commercial Company, the non-profit organization:</p> <ul style="list-style-type: none"> • does not require a minimum capital; • cannot aim to make a profit but can charge membership fees and organize activities in return for payment where these are compatible with its purpose; • cannot distribute profits to its members;



Organizational Questions

Topic	Feature	Remarks
Company registration process	<p>The company registration process in Belgium is one of the fastest in Europe lasting only a few days. Only one single enterprise ID number for companies is issued (valid for VAT, company registration and social security).</p> <p>3 steps to start up a business:</p> <p>Bank: The starter deposits the minimum capital.</p> <p>Notary: The starter goes to the notary. The notary submits the authentic act electronically and receives the company number from the Crossroads Bank for Enterprises (BCE, KBO).</p> <p>Business Counter or Business one-stop shop: At one of the business counter or business one-stop-shops the starter can activate the unique company number.</p> <p>Documents required registering at a business counter or Business one-stop shop:</p> <ul style="list-style-type: none"> • Personal identification data of the founder or founders; • Corporate and trade names of the business; • Legal form; • Enterprise number; • Operating addresses (including phone, fax number and e-mail address); • Start date of the business's activities; • Publication date of the articles of Corporation in the Belgian Official Gazette; • Account number of a financial institution; • Proof of knowledge of basic management and where appropriate of professional expertise (eg foreigners card, butcher's licence); • A copy of the articles of association and a management mandate certificate; 	<p>A company may not enter into prior to its incorporation.</p>

Commercial Register	To obtain legal personality companies have to register with the Register of Legal Persons, which is part of the Enterprise Crossroads Bank (a register that contains all the identification data concerning companies).	Prior to its incorporation any transactions until it has legal identity.
Bank Account	To open a bank account individuals need a valid passport and a residence permit. Companies need an excerpt from the commercial register and the articles of association of the company.	There are some banks which operate entirely online. Banks charge separately for services offered in addition to each transaction.
Transfer of Goods and Machinery	Within the EU goods and machinery can circulate freely. Imports from non-EU states to Belgium cause customs, and in some cases special excise taxes.	But there are several customs exemptions to be considered.
Transfer of Capital	Capital can be moved in and out of Belgium without any restrictions.	Cash payments above EUR 3.000 are not allowed anymore in commercial transactions. Payment of a sale of property can only be done in cash to an amount of 10% of the sales price of the property and with a maximum of EUR 15.000.
Visa and Residence permit	<p>A residence permit is needed for stays of three months or longer. An application must be filed in the Belgian Embassy or Consulate in the applicants country.</p> <p>Upon arriving in Belgium it is necessary to officially register with the municipal authorities.</p>	In the time of setting up business a Schengen Travel Visa may be sufficient, which enables its holder to stay in Belgium for up to 3 months. For a longer stay a residence permit is needed. This residence permit has to be renewed every year.

Employment

Topic	Feature	Remarks
Work permit	<p>EEA (European Economic Area) member state nationals and non-European nationals married to or settled together with an EU citizens do not require a work permit to work in Belgium. A lot of exceptions are granted. All other citizens require a permit.</p> <p>There are 3 kinds of work permit:</p> <p>Type A: has no term and is valid for all employers and all paid professions on the entire Belgian territory. It is granted to a foreign national who can prove 4 working years that are covered by a work permit type B, during a maximal and uninterrupted residence period of 10 years.</p> <p>Type B: for all employees who are not entitled to work with a permit type A and C. The employer must apply for it for the foreign national he wants to employ. Validity for maximal duration of one year and for this employer only.</p> <p>Type C: This permit is valid for all employers and for all paid occupations on the Belgian territory and is granted to persons whose stay is temporary. The maximum validity period of this permit is 1 year.</p>	

Labour law	<p>Since 2014 differentiation is no longer made between two main types of employees: labourers and clerks. Maximum working hours are normally 38 hours a week. Overtime is allowed provided that structure legal conditions are fulfilled. Sick leave entitles employees their income up to 30 days after which the employee is covered by social security. A holiday of 20 days is guaranteed for full employment in previous year.</p> <p>Special requirements for non-Belgian workers:</p> <p>Temporary secondment: Relationship is maintained with the non-Belgian company, which assigns the employee on a temporary basis to Belgium. The employee cannot become an employee of the Belgian company and he remains on the pay-roll of the foreign company and is covered by the foreign company's social security system.</p> <p>Attachment: Foreign employee becomes the employee of the Belgian company and therefore becomes subject to the Belgian social security system.</p>	
Professional card	All non-residents, except EEA nationals, are required to hold a valid professional card if they are self-employed.	The application can be filed in the Belgian Embassy or Consulate in the applicants country.
Social system	<p>The National Office of Social Security (ONSS) collects and distributes the contributions for granting social benefits.</p> <p>The employer contributes around 35%, the employee around 13% of the employees gross income.</p> <p>Each employer must submit two types of declarations to the ONSS (National Social Security Office): one statement upon the start or end of service of a worker (DIMONA declaration) and a quarterly declaration of all services and wages of all his staff (Dmfa quarterly declaration). Each employer is responsible for collecting and paying the social security contributions.</p>	Belgium has made social security treaties with several states and, as EEA member state applies the social European regulations. Thus, expatriates from these countries may remain covered by the social security system of their home countries while working in Belgium, in certain conditions.



Taxation

Tax	Feature	Remarks
Corporate Income Tax	<p>The standard corporate income tax rate is 33.99% (3% special crisis contributions included) on taxable income in excess of EUR 332,500.00.</p> <p>When taxable income does not exceed EUR 322,500.00, tax rates range from 24.25% to 34.50% for most small and medium-sized companies.</p>	
Personal Income Tax	<p>The rate of personal income tax starts at 25% for an annual income up to EUR 10.860. It rises progressively to a maximum personal income tax rate of 50%, which is applicable to earnings of EUR 38.080 or more.</p> <p>Due to personal allowances, the tax due is reduced by a tax credit. For a single taxpayer, the minimum net taxable income is EUR 7.030 but can amount to EUR 7.380 when taxable income is less than EUR 26.360.</p> <p>Dividends are normally taxed at 27 % (15 % in some cases when applying the double taxation treaties), but can be withholding taxes but they are not taxed when the Belgian holding company controls at least 10% of the shares of an EU subsidiary for a minimum period of 12 months, or engages to do so, according to the EU parentsubsidiary directive. Dividends paid by Belgian subsidiaries to EU parent corporations are exempt from Belgian withholding taxes provided the EU parent corporation has held 10% from the shares in the Belgian subsidiary for at least 12 months.</p>	<p>The rates of personal income tax are increased by a municipal surcharge (between 0% and 9 % computed on the State tax)</p>
Value Added Tax (VAT)	<p>The normal VAT rate is 21%, a lower rate of 12% is charged for special products and services. On convenience goods, such as basic food, water distributions, hotel services or public transport the VAT is 6%. Some services are VAT-exempt, e.g.: dividends, interest on loans and deposits, doctors, lawyers and notaries fees.</p>	<p>With registering a business (see "Company registration process") you receive one single ID number for the company which is valid for VAT, company registration and social security.</p>

Capital Gains Tax (CGT)	<p>Individuals: No taxation if not engaged in business activities, with some exceptions, e.g. speculative transactions, sale of immovable property within five years of the acquisition or between five and eight years of acquisition.</p> <p>Companies: Tax paid at company tax rate. Rollover relief for gains on fixed assets held for more than five years and subject to reinvestment.</p> <p>Capital gains on shares are in most cases fully exempt from corporate income tax if received from companies that are subject to Belgian corporate tax or from non-resident companies subject to a similar foreign corporate tax.</p> <p>Losses on shares are not deductible.</p>
Real Estate Tax	As annual tax on real estate is levied at a basic rate of 1.25% to 2.5% on the cadastral value. Additional local taxes may bring the total burden on real estate to 35%-50% of the indexed cadastral value.
Real Estate Transfer Tax	When domestic real estate changes owner, it is subject to registration duty at the rate of 10% (Flanders) or 12,5% (Wallonia) on the transfer price. This duty usually has to be paid by the buyer.
Non-resident Taxation	<p>A special tax regime is applicable to some foreign executives, specialists and researchers residing temporarily in Belgium, which includes a taxfree allowance. They are only taxed on salary relating to professional activities performed in Belgium.</p> <p>Certain costs and expenses are attributable to the employer and their reimbursement is not taxable on behalf of the employee. These costs are the ones the employee has due to his repatriation to Belgium. These allowances are not considered as taxable income and can therefore be exempt from Belgian personal income tax.</p> <p>Non-residents with no home in Belgium and who earn less than 75 % of their earned income in Belgium are not granted the personal allowances. The first EURO is taxed at 25 %. There are some exceptions provided in tax treaties.</p>

Why investing in Belgium as a company?

1. NOTIONAL INTEREST DEDUCTION

This is a tax deduction for venture capital which alleviates the differences in tax treatment between finance raised through borrowed capital and finance raised through equity capital. The system allows companies to deduct from their tax base a notional interest charge corresponding to a specific percentage of their adjusted equity capital.

SME = 1,631% (Tax assessment year 2017, accounting year 2016)

OTHERS = 1,131% Tax assessment year 2017, accounting year 2016

2. DIVIDEND WITHHOLDING TAX EXEMPTION

This new exemption extends the European Parent-Subsidiary Directive between the EU member states and Switzerland to all countries that have a double tax treaty with Belgium, such as the United States and many others. Using Belgium as their holding location for investments in Europe allows corporate investors from treaty countries to repatriate European profits without paying dividend withholding tax and without limitation on profits.

3. REDUCED WAGE COSTS FOR FOREIGN EXECUTIVES AND RESEARCHERS

The Belgian tax system offers attractive conditions for employers, including lower wage costs for foreign executives and researchers. Expat employees posted to Belgium entail real, but reasonable, additional costs for their employer, Company or relevant legal person. Fortunately, however, employers do not have to pay tax on the remuneration of these foreign executives. There is also a substantial exemption from payment of wage tax for researchers.

4. TAX SHELTER

The tax shelter is a tax incentive designed to encourage the production of audiovisual works and films. The system allows Companies wishing to invest in the production of audiovisual work to benefit from a tax exemption on retained profits worth up to 150% of the capital actually invested;

5. UNLIMITED CARRY FORWARD OF TAX LOSSES

Tax losses can be carried forward without limitation in amount but limited to the taxable income left before this deduction is done.

6. VARIOUS TAX INCENTIVES FOR RESEARCH & DEVELOPMENT

- Tax reduction on patent income;
- Increased investment deduction;
- Tax credit for R&D;
- Partial exemption from payment of wage tax for researchers;
- Tax exemption on allowances and capital and interest subsidies awarded by regional institutions to support corporate R&D.

	Criteria	Accounting	Filing of FS
Very small Companies	Turnover (VAT Excl.) for the last financial year does not exceed EUR 500.000	Simplified set of books (no double entry accounting)	No
Small enterprise	Annual average of its workforce does not exceeds 100 persons and not more than 1 of the following criteria is exceeded: 1) Annual average workforce: 50 2) Total assets: EUR 4.500.000 3) Annual turnover (VAT excl.)=EUR 9.000.000	Double entry accounting	Abbreviate format
Medium enterprise	These threshhods were increased as of the accounting year 2016		
Large enterprise	More than 1 of the following criteria is exceeded: 1) Annual average workforce: 50 2) Total assets: EUR 4.500.000 3) Annual turnover (VAT excl.)=EUR 9.000.000 These threshhods were changed as of the accounting year 2016	Double entry accounting	Full format

APPOINTING A STATUTORY AUDITOR IN BELGIUM

The obligation to appoint a statutory auditor applies to each large enterprise (see scheme above) incorporated under the Belgian Law, whether its object is social or not and established in the form of:

- a public limited liability company;
- a private limited liability company;
- a cooperative limited liability company;
- a partnership limited by shares;
- if one of the members (located in Belgium or abroad) is liable to the audit of a statutory auditor:
 - EIG = Economic Interest Grouping;
 - EEIG = European Economic Interest Grouping registered in Belgium.
- If not all the members are natural persons:
 - General partnerships;
 - Ordinary limited partnerships.
- a European company registered in Belgium;

The criteria for appointing a statutory auditor are to be considered on a stand-alone basis except for:

- Companies which are part of a group which is obliged to prepare and publish financial statements (within or outside Belgium)
- Companies whose shares are quoted on the official Stock Exchange

The auditor is appointed for a term of three financial years by the Shareholders Meeting, upon proposal of the Board of Directors and when applicable after approval by the works council. The auditors' remuneration should be approved by the shareholders meeting. The auditor can be reappointed without limitation but changes are expected in the near future.

This material has been prepared by Antea Alliance of Independent Firms. It is intended as general guide only. Accordingly, we recommend that readers seek appropriate professional advice regarding any particular problems that they encounter. This information should not be relied on as a substitute for such an advice. While all reasonable attempts have been made to ensure that the information contained herein is accurate, Antea Alliance of Independent Firms accepts no responsibility for any errors or omission it may contain whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies upon it.

© 2017 ANTEA



Mallorca, 260 àtic
08008 - Barcelona
Tel.: + 34 93 215 59 89
Fax: + 34 93 487 28 76
Email: info@antea-int.com
www.antea-int.com

