About Vistra Belgium

Introduction

Belgium, with its open and strongly globalized economy, lies in the heart of the European Union (EU).

Its capital, Brussels, is home to the EU headquarters and is a host to many international organisations and multinationals, including the headquarters of NATO.

High speed trains connect Brussels directly with Paris, London, Frankfurt and Amsterdam.

The city of Antwerp has the second-largest European port and the second largest chemical cluster in the world. It is also the world's largest diamond centre.

Belgium's three official languages are Dutch, French and German. The two main regions in Belgium are Flanders; the Dutch-speaking portion in the North, and Wallonia; the predominantly French-speaking region in the South.

Business infrastructure in Belgium is very well organised. It is well known for it's holding-friendly environment, and benefits from a wide network of double taxation treaties covering over 92 countries.

Key fiscal issues

- **Notional Interest Deduction**

  Belgian resident companies and permanent establishments of non-resident companies are entitled to deduct a deemed interest expense in connection with qualifying equity which is 1,131% for large companies and 1,630% for small and medium-size companies for the 2017 tax year.

- **Participation exemption**

  Capital gains on shares are taxed at a rate of 0.412% only, provided that certain conditions are met ('subject to tax' requirement, minimum holding period of one year). For small and medium-sized companies, these gains are 100% tax exempt, in case the shareholding exceeds a one year period and the subject to tax requirement is met.

- **Dividend received deduction**

  Dividends received by Belgian tax-resident companies or permanent establishments of non-resident companies on shares held in resident or non-resident companies are 95% exempt from corporate income tax, provided certain conditions are met.

- **Withholding tax rates**

  Dividends paid are in principle subject to a 30% withholding tax. For SME's a lower withholding rate of 20% or 15% can be applied if certain conditions are met. However, under Belgium's implementation of the EU Parent/Subsidiary directive, no tax is withheld on dividends paid to a company that is registered in Belgium or another EU member state, provided that certain conditions are met. In addition, Belgium has extended these rules to all parent companies registered in a country with which Belgium has signed a double tax treaty.

  Interests paid by a Belgian company are in principle subject to 30% withholding taxes unless reduced or exempted under a double tax treaty or where the EU interest and royalties directive or a domestic exemption applies.

  Royalties paid by a Belgian company are in principle subject to 30% withholding tax, but the rate may be reduced or even exempted under a double tax treaty, or under EU interest and royalties directives.

- **Other issues**

  Although Belgium currently has no controlled foreign corporation rules, this might change in the very near future confirming to the international developments.

  Anti-avoidance legislation is applicable. If a legal deed or the set of legal deeds is not driven by any other reason than tax avoidance, the transaction will be treated in line with the purpose of the law as if the tax abuse had not taken place.

Thin Capitalization Rule

The Belgian Thin Capitalization Rule provides for a general 5:1 debt-to-equity ratio, a rate that is still favourable compared to other jurisdictions.

Belgian Ruling Commission

Taxpayers may obtain upfront certainty from the Belgian ruling Commission with respect to any federal tax consequence of a proposed transaction. Transfer pricing positions can be proactively safeguarded by advanced rulings by the tax administration or advance pricing agreements.

Company types in Belgium

1. BVBA/SPRL - private limited liability company

   A private company ('besloten vennootschap met beperkte aansprakelijkheid', or 'société privée à responsabilité limitée') is a corporate entity with legal personality. Its share capital is divided into shares that are registered and not freely transferable. The shareholders' liability is limited to the amount of their contribution. The minimum capital requirement is EUR 18.550 - of which EUR 6,200 needs to be paid up front. Contribution to share capital can be in cash or in kind.

   The BVBA/SPRL is incorporated by a notarial deed of incorporation which includes the Articles of Association. An extract of the Articles of Association is published in the Belgian Official Gazette.

   The BVBA/SPRL is appropriate for small and large business and qualifies under the extensive Belgian treaty network.

   A BVBA/SPRL can also be incorporated by only one natural person, being the single shareholder of the company. Such *'one person BVBA/SPRL'* is similar to the BVBA/SPRL, except that a minimum of EUR 12,400 - , should be fully paid up front. Also, the limited liability only applies to the first one person BVBA/SPRL; for any additional one person BVBA/SPRL the single shareholder/ manager has unlimited liability. In case the single shareholder is a corporate entity, there is no limited liability.

2. NV/SA - public limited liability company

   A public company ('naamloze vennootschap' or 'société anonyme') is similar to the BVBA/SPRL, but its shares can have different forms, they are easily transferable, and can be listed at a stock exchange. The minimum share capital is EUR 61.500, to be fully paid up front. Contribution to share capital can be in cash or in kind.

   The NV/SA has the possibility of distributing interim dividends and increasing the capital by board decision.

   The NV/SA is eligible for application of the extensive Belgian tax treaty network.

   Similar to the BVBA/SPRL, an extract of the Articles of Association is published in the Belgian Official Gazette.

3. Comm.VA/SCA - partnership limited by shares

   This type of company is similar to the NV/SA, but with the features of a partnership: the liability is distributed between two types of partners: the managing or active partner, who is designated in the Articles of Association, and who has unlimited liability, and the silent partner, who is only liable to the extent of his capital contribution. The shares of a CVA/SCA can have different forms and can be listed at a stock exchange.

4. CVBA/SCRL

   The CVBA/SCRL is an association ('cooperative') incorporated by a notarial deed and has legal personality. It allows variability in the number of shareholders (minimum 3) and the amount of capital (respecting a minimum amount) without alteration to the articles of association. The minimum share capital amounts to EUR 18.550; of which only EUR 6,200 needs to be paid up front.

   The cooperative is subject to corporate income tax and qualifies under the Belgian tax treaty network.

   The company's incorporation is liable to publication in the Belgian Official Gazette.

5. Partnerships

The most important forms of partnerships have legal personality under Belgian civil law. These partnerships are subject to corporation tax and qualify under the Belgian tax treaty network. Also, the companies' incorporation and subsequent modifications of the Articles of Association are to be published in the Belgian Official Gazette;

- **Comm.V/SCS:** is constituted by a minimum of two partners. Managing partners have an unlimited liability, except for the silent partner, who has a limited liability. For its constitution or constitutional changes, no notarial deed is required, nor is there a minimum capital requirement.
- **VOF/SNC:** is similar to the Comm.V/SCS, with the exception that there is no silent partner. It can be constituted by means of a private deed.

One of the most common forms of partnership that has *no* legal personality is called the Maatschap (Société de Droit Commun); it arises out of a consensual contract between partners that is not bound to any specific form, and where partners have unlimited liability.

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