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TEN REASONS TO INVEST IN BELGIUM

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Over the past years, Belgium has considerably improved its attractiveness towards foreign investors and enhanced its position on the international business scene by introducing a series of tax and legal measures primarily favouring inbound investment. Although Belgian tax resident companies are subject to a Belgian corporate income tax rate of 33.99%, specific tax measures are officially estimated to have reduced the effective tax rate to an average level of 26%, in certain cases much less. These measures have been kept in place in spite of the financial and economic crisis.

Moreover, Belgium offers an attractive income and estate tax regime for certain categories of individuals.

I. ATTRACTIVE HOLDING COMPANIES REGIME

Belgium does not offer tax consolidation except for VAT purposes ("VAT unity"), but presents one of the most flexible holding companies regimes in Europe.

I.I. Participation Exemption

I.I.I. 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 the following (simplified) holding and taxation requirements are met.

Holding requirements:

- Holding represents at least 10% of the equity of the paying company or has an investment value of at least €2,500,000;
- Holding is held in full ownership; and
- Holding has been or will be fully owned for an uninterrupted period of at least one year.

Taxation requirements:

- Dividends must not be paid or distributed by companies resident in a country whose common tax regime is significantly more favourable than the Belgian tax regime (as a general rule, less than 15% (effective) taxation) or otherwise escape effective taxation.
- The tax regimes of the EU Member States are deemed to fulfil this requirement; as a result of the double tax treaty concluded with Hong Kong, the tax administration considers that dividends paid by a Hong Kong subsidiary qualify under the taxation conditions.

Note that financing expenses – including interest on borrowings for acquiring shares – are as a general rule deductible without limitation, often more than offsetting the 5% taxable fraction of dividends, and that, in the case of dividends from EEA source and several other tax-treaty countries, any excess deduction may be carried forward.

I.I.2. Capital gains on shares

Capital gains on shares are subject to very limited taxation of 0.412% (and are even fully exempt in the case of capital gains realized by small and medium-sized companies) on condition that the dividends relating to such shares would satisfy the taxation requirement for the dividend-received deduction at the time the gains are realized and subject to a one-year holding requirement in full ownership. If the one-year full ownership requirement is not met, the gains are taxed at 25.75%. Realization expenses are disallowed.

Capital losses or reductions of value on shares are not deductible, unless incurred upon full liquidation of the company, and only up to the fiscal capital represented by those shares (the corresponding part of the share capital effectively paid in and not already reimbursed). Shares held as inventory by qualifying financial institutions, investment companies and management companies of collective investment companies are fully taxable; losses are fully deductible.

I.2. Dividend withholding tax exemption

Belgium has extended the dividend withholding tax (WHT) exemption of the EU Parent-Subsidiary Directive to all parent companies established in a country with which Belgium has signed a double tax treaty. The WHT exemption applies to dividend distributions, provided that the company receiving the dividend directly holds at least 10% in the capital of the Belgian distributing company for an uninterrupted period of 12 months.

The exemption does not apply where the receiving company:

- is not subject to corporate income tax as a resident of that country or is subject to an exceptional corporate tax regime in that country;
- has a legal form which is not analogous to one of the forms listed in the annex to the EU Parent-Subsidiary directive; or
- is resident in a treaty country that has not agreed to a full exchange of information clause (that latter condition excludes Switzerland as a fully qualifying location; an exemption however is granted to the Swiss parent company in case of a holding of 25% held during a period of 24 months).

I.3. Interest / royalties distributed by Belgian companies

Interest and royalties paid by a Belgian debtor are subject to 25% WHT in principle.

However, the Belgian Income Tax Code provides for several exemptions, notably for registered bonds held by non-residents. Furthermore various exemptions or rate reductions are available under Belgian double tax treaties.

Interest and royalties paid to EU companies (including Belgian companies) are exempt from WHT, provided that the paying and the beneficiary companies are affiliates. Companies are considered affiliates when one of them holds, directly or indirectly, 25% of the other's capital during an uninterrupted period of at least one year or when a third company located in the EU directly or indirectly holds at least 25% of the capital of each of these companies during an uninterrupted period of at least one year.

Thin cap rules apply on intra-group or offshore financing exceeding five times the equity.

I.4. No Controlled Foreign Corporations rules

Profits of foreign subsidiaries of a Belgian company can be accumulated in those subsidiaries and reinvested, without triggering any tax in Belgium.

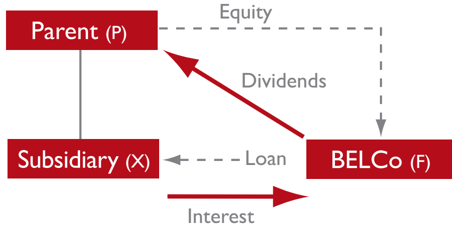
2. THE SO-CALLED "NOTIONAL INTEREST DEDUCTION" ("NID") OR DEDUCTION FOR RISK CAPITAL

High equity companies enjoy a considerable tax break.

Since 2006, the tax base of any Belgian company or of any Belgian permanent establishment of foreign company is reduced, for each year, by a deduction for risk capital, corresponding to a notional interest charge calculated on the entity's total equity at the close of the previous financial year (i.e. share capital plus retained earnings as they appear on the balance sheet, subject to a couple of fiscal corrections aimed at countering abuse and double dip). The applicable interest rate is in principle the average of the 10-year government bond rates for the months of July, August and September of the last but one year prior to the tax year, capped at 3% (3.5% for SMEs). The applicable rate for income year 2015 amounts to 1.63% (2.13% for SMEs).

This provision aims at promoting equity funding of companies and has triggered increased foreign direct investment into Belgium. Whereas the nominal corporate tax rate remains at just below 34%, it has been calculated that the provision reduces the effective tax rate to an average of 26%. However, the effective rate is considerably lower for capital-intensive activities such as financing.

The measure offers interesting tax-planning opportunities for both Belgian and foreign entities. One obvious opportunity is the use of a Belgian company to centralize group cash flow.



If a parent company "P" wants to finance the activities of its subsidiary "X", P can increase the capital of a (genuinely substantial) Belgian company F, which lends the funds on to X. X then pays interest to F, which redistributes its profit as a dividend to P. The interest paid by X to F - at a rate of 3.5% - is taxable in Belgium, but F can apply the deduction for risk capital based on the capital initially contributed by P. If the deduction rate for the year in question is 3%, F's taxable profit will be 0.5% of the capital amount rather than 3.5%. The standard rate of Belgian corporate income tax is almost 34%, but the actual rate paid is under 5%.

Also note that, since 2006, capital contributions, in cash or in kind, to the equity of companies have no longer been subject to any tax, so that high equity can be built up at no tax cost.

Large companies using the NID to offset their tax base may in certain circumstances be subject to a minimum corporate tax (the so-called "fairness tax", introduced as from assessment year 2014).

3. PROACTIVE DOUBLE TAX TREATY POLICY

Belgium signed several uncommon double taxation treaties. The network of treaties concluded by Belgium has been reinforced in the past years in the direction of the US, Asia (treaty with Hong Kong and Singapore), the Middle East (treaties in effect with the United Arab Emirates, signed with Bahrain, Qatar, Oman), Africa (treaties in effect with Congo, Ghana, Rwanda, Gabon,…) but also with countries often regarded as tax havens (treaty in effect with San Marino, treaties signed with the Seychelles, Macao, the Isle of Man…). In addition, the treaty negotiating process has become open and transparent in order to create a continuous dialogue with taxpayers and their advisers.

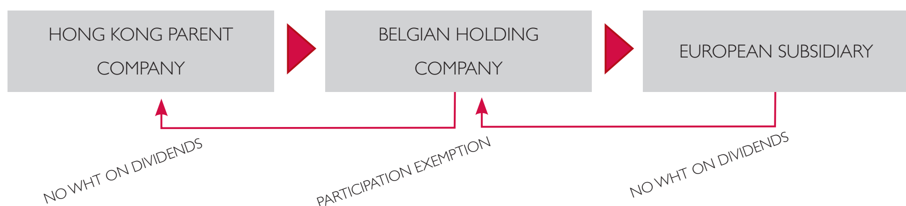
The Belgian - Hong Kong Treaty was signed on 10 December 2003 and came into effect in Belgium on 1 January 2004 and in Hong Kong on 1 April 2004. As one of the very few double taxation treaties entered into by Hong Kong, it is a very interesting tool for international tax planning purposes. The treaty's main features are sketched out below.

3.1. Dividends withholding tax – Using Belgium as the location for an intermediate holding company

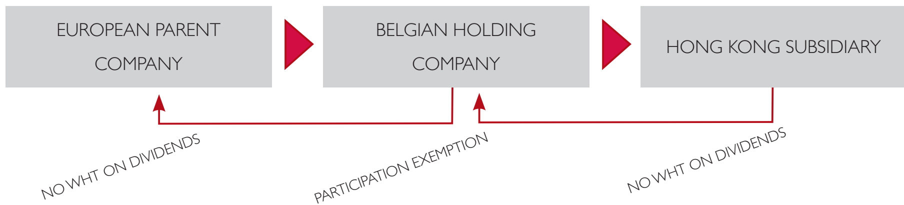
According to the Treaty, the WHT on dividends between Belgium and Hong Kong is limited to:

- Nil if the beneficial owner of the dividends is a company which at the moment of payment of the dividends held, for an uninterrupted period of at least twelve months, shares representing directly at least 25% of the capital of the company paying the dividends;
- 5% of the gross amount of the dividends if the beneficial owner is a company which directly holds at least 10% of the capital of the company paying the dividends;
- 15% of the gross amount of the dividends in all other cases.

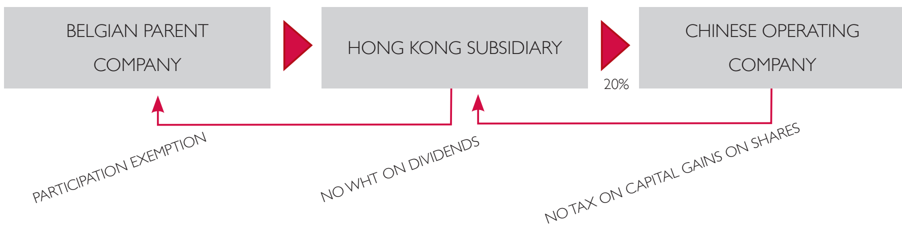
A Belgian company may therefore be used by a Hong Kong parent company as a holding company to hold various subsidiaries within the EU and repatriate dividends free of WHT as follows:



Alternatively, a Belgian company can be used as a holding company by a European parent company to hold a Hong Kong subsidiary and, hence, various companies in China and Asia, as follows:



As regards co-investment in (mainland) China made through a Hong Kong company, there is also a peculiarity in the arrangement between the mainland of China and the Hong Kong Special Administrative Region for the avoidance of double taxation (applicable as of 1 April 2007): capital gains realized on shares owned by a Hong Kong company in a Chinese company are only taxable in Hong Kong (i.e. no taxation) provided the Hong Kong company does not own more than 25% of the Chinese subsidiary. In other cases, the capital gains are taxable in China.

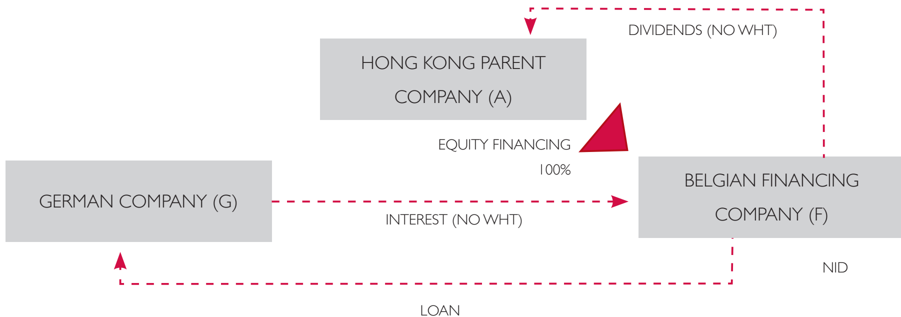


3.2. WHT on interest – Using Belgium as the location for an intragroup financing company

The Treaty provides for 0% WHT on interest from:

- commercial debt-claims represented by commercial paper resulting from deferred payment for goods, merchandise or services supplied by an enterprise;
- debt-claims or loans of any nature (not represented by bearer instruments) paid to banking enterprises;
- deposits made by an enterprise with a bank;
- certain loans related to the Hong Kong or Belgian governments.

The 0% WHT rate combined with the NID enhances the attractiveness of Belgium as a location for financing companies. For instance, if a parent company in Hong Kong (A) wants to finance the activities of a subsidiary (G), A can increase the capital of a Belgian company (F), which grants a loan to G. G then pays interest to F, which redistributes its profit as a dividend to A. This example is illustrated as follows:



Thanks to the treaty between Germany and Belgium, there is no WHT on interest paid by G to F. Assuming the interest rate on the loan is 3.5%, the interest is taxable in Belgium, but, for tax purposes, F can deduct the NID calculated on the capital contributed by the Hong Kong parent company, A. Based on a rate of deduction of 3% for the considered year, the taxable profit of F will be 0.5% of the amount of the loan instead of 3.5%.

The standard rate of Belgian corporate income tax is 33.99%, so that the actual tax rate is 4.86%. Provided the Hong Kong parent company has a holding of at least 25% in the Belgian company, subsequent distribution of the dividends will not be subject to WHT in Belgium.

3.3. Royalties derived from or paid to a Belgian company

Under the Treaty, the WHT on royalties is capped at 5% of their gross amount.

4. UPGRADED SYSTEM OF ADVANCE TAX RULINGS

Since 2003, Belgium has had an efficient and effective ruling system that easily bears comparison with other more traditional ruling jurisdictions: taxpayers may now obtain from the Belgian tax authorities advance rulings on the application of tax laws to any contemplated transaction (including transfer prices), provided such transaction has not yet generated any fiscal effect. Only a few matters may not be the subject of an advance ruling, in particular when the essential elements of the transaction relate to a tax haven country listed by the Organization for Economic Co-operation and Development (OECD) or when the contemplated transaction has no economic substance in Belgium.

In principle, the Belgian Ruling Commission rules on a matter within three months. A formal ruling covers a five-year period, unless its object justifies another time limit. In addition, meetings on a no-name basis are possible without there being any obligation to file a ruling application.

5. ATTRACTIVE TAX REGIME FOR INVESTMENT FUNDS

5.1. Institutional Investment Funds

Belgium has positioned itself as a prime onshore jurisdiction for institutional investors to set up investment funds, thus becoming an attractive location inter alia for international asset pooling by pension funds. Belgian institutional investment funds indeed enjoy favourable regulatory and tax regimes. Properly structured, these investment vehicles can achieve an overall tax burden of close to nil.

Institutional investment funds must be registered with the Ministry of Finance, but the registration conditions are minimal (designation of a depositary, copy of the bylaws and an extract thereof as published in the Belgian Official Journal, and a declaration that all the operating conditions are complied with); approval is fast track (notification within 15 days of application).

There is:

- no prudential supervision by the Financial Services and Markets Authority;
- minimal reporting and publicity requirements: annual accounts must be prepared once a year and a specialist statutory auditor must be appointed, but there is no obligation to draft a prospectus or publish net asset values in the newspapers;
- no investment limit, even though redemption requests must be honoured at least once a month;
- possibility to invest in a broad array of financial instruments, to use leverage and engage in short selling.

Institutional investment companies are subject to Belgian corporate tax, but in principle the tax base will be nil or close to nil, as it comprises only any non-arm's length benefits the company may receive and a limited number of non-deductible items.

As far as withholding tax on inbound dividends and interest is concerned: as institutional investment companies are subject to Belgian corporate tax, they generally qualify for the benefits of Belgium's double taxation treaties and can therefore benefit from the reduced foreign WHT rates that these treaties provide for.

As far as WHT on outbound dividends and capital gains is concerned: as yet, only foreign pension funds enjoy a general exemption from WHT on the dividends distributed by institutional investment companies. However, except to the extent the income qualifies as interest under the Savings Directive, there is no WHT upon the redemption of shares,and shares can be redeemed flexibly in open-ended companies. Similarly, no Belgian tax will be withheld upon liquidation. As a rule, foreign investors are also not taxable in Belgium on capital gains upon the transfer of shares in institutional investment companies.

As far as indirect taxes are concerned: as institutional investment funds are not supervised by the Financial Services and Markets Authority (FSMA), they are not subject to the 0.04% fee on their net assets, which otherwise represents a contribution to the Commission's operating expenses. They also enjoy a reduced annual subscription tax of 0.01%, instead of the 0.08% payable by public investment companies.

5.2. Favourable Reit Regime: The Regulated Real Estate Companies

In 2014, Belgium has created a new status of real estate investment company called the société immobilière réglementée (SIR) or gereglementeerde vastgoed vennootschap (GVV), as an alternative to the existing status of a real estate fund (sicafi or vastgoedbevak).

The new status of SIR/GVV is the equivalent of the existing Belgian real estate funds (sicafi or vastgoedbevak) but with the major difference that, contrary to those forms, it is not caught under the AIFMD regulations since SIRs/GVVs carry on operational and commercial activities.

A SIR/GVV must carry out operational activities (no management functions may be delegated) and may not own real estate assets other than land and buildings above a certain percentage of their total assets. They are subject to supervision by the Belgian FSMA. SIRs/GVVs are obliged to redistribute at least 80% of their corrected net results.

Although SIRs/GVVs are subject to corporate income tax (33.99%), their taxable income is limited to the amount of any non-arm's length benefits transferred to them by related parties and to the amount of certain disallowed expenses. Capital gains and recurrent income from property are not therefore subject to corporate tax.

From a Belgian perspective, SIRs/GVVs benefit double taxation treaties because they are subject to Belgian corporate income tax.

Dividends distributed by SIRs/GVVs are as a rule subject to a 25% withholding tax (15% for dividends distributed by SIRs/GVVs qualifying as "residential"). Non-resident investors can apply for reduced withholding tax under an applicable tax treaty. This needs to be examined on a case-by-case basis. For non-resident investors and resident individual investors, the withholding tax is the final tax.

Like other registered investment companies, SIRs/GVVs are subject to an annual subscription tax and have to pay annual fee to the FSMA.

6. ATTRACTIVE TAX REGIME FOR R&D INVESTMENTS - PATENT INCOME DEDUCTION

A number of tax measures designed to stimulate innovation in Belgium have been implemented (tax credit for R&D, patent income deduction, etc). These measures make Belgium particularly attractive for innovative companies and intangible property centres.

The most important measure was introduced in 2007 and provides for a deduction from taxable income of up to 80% of the income derived from patents that were either:

- partly or fully self-developed by a Belgian company or branch in a research and development centre in Belgium or abroad, or
- acquired/licensed from third parties and subsequently improved by the company or branch in a research centre in Belgium or abroad.

Since assessment year 2014, the condition that patents should be developed or improved in a research centre in Belgium or abroad is no longer applicable to SMEs.

The 80% deduction not only applies to royalty income from the licensing of patents but also to patent income that is embedded in the price of products manufactured by the company or on its behalf where the patent is used by the company in the process of manufacturing patented products. The 80% deduction is not capped.

As a result, patent income is now subject to an extremely favourable tax rate of approximately 6.8% (one-fifth of the Belgian statutory rate of 33.99%). The effective tax rate will be even lower in practice considering that existing tax incentives for R&D investments remain in place. All research and development expenses (such as salary costs; research and development infrastructure costs; patent registration duties; and depreciation, administration and finance costs) relating to self-developed patents continue to be deductible in accordance with standard Belgian tax rules.

Note that a favourable specific "tax shelter" regime exists for financing cinematographic productions in Belgium.

7. TAX NEUTRAL REGIME FOR CROSS-BORDER REORGANIZATIONS

The array of measures which contribute to making Belgium an attractive location for foreign investments was further added to in January 2009 by a comprehensive tax framework allowing intra-European reorganizations, involving one or more Belgian entities and/or Belgian permanent establishments, to take place in a tax-neutral way. The tax neutral regime is not only applicable at the level of the companies involved in the reorganization (roll-over of capital gains, creation of equity, transfer of tax losses) but also in the hands of their shareholders (tax-neutral exchange of shares). Some of the new rules in the Belgian act go further than the strict scope of the EU Merger Directive and may give room for tax efficient restructuring opportunities.

8. FLEXIBLE COMPANY AND LABOUR LAWS

Belgian company law is modern, with a Companies Code often deemed to be more effective and flexible than neighbouring legislations. Recent legislation has somewhat relaxed the rules on financial assistance, which were already more flexible than in, e.g., the UK. Provisions on contributions in kind to public and private limited liability companies and limited cooperatives have also been simplified; as a result, certain contributions in kind no longer require auditing. And the conditions applicable to the acquisition of own shares in public and private limited liability companies have been relaxed.

As a general rule, an employer has the choice to terminate an employment contract either by observing a notice period or paying compensation in lieu of notice. Special procedures have to be gone through when dismissing "protected workers", in particular workers' representatives on a works council or a health and safety at work committee. Strict rules also apply in the case of collective redundancies.

Regarding the notice period, a unified regime for blue-collar and white-collar workers entered into force on 1 January 2014. For dismissal and resignation, the new notice periods now depend solely on length of service. Salary levels and the employee's position no longer affect the termination package for white-collar workers.

Notice periods notified as of 1 January 2014 start on the Monday that follows the notification date (as determined by law). Notices are expressed in weeks, not months or days. Dismissals notified as from 1 April 2014 have to be justified if requested by the dismissed employee. As from the same date, the specific protection for blue-collar workers under the unfair dismissal rules has come to an end, except for some categories of blue-collar employees.

In general, the trial period no longer exists.

A system of temporary unemployment that used only to exist for blue-collar workers was also introduced for white-collar workers in 2009 and allows for temporary suspension of employment contracts in order to reduce labour costs during periods of economic crisis without having to make people redundant.

The law provides various means to introduce flexible working arrangements, such as flexible working hours, part-time work with variable working schedules and teleworking.

Workers' representation is organized through a works council (in companies that employ an average of at least 100 workers) and/or a health and safety at work committee (in companies that employ an average of 50 workers or more) and/or a union delegation (in companies reaching a certain threshold of unionized workers as determined at sector level).

9. INVESTMENT GRANTS

Industrial policy is a regional competence, so that regimes are different in Flanders, Wallonia and Brussels. Various types of investment grants and tax breaks are available.

10. ATTRACTIVE TAX REGIME FOR FOREIGN EXPATRIATES AND BELGIAN RESIDENTS

10.1 Special tax regime for expatriates

Under certain conditions determined by the administration, foreign executives temporarily assigned to work in Belgium within an international group of companies can benefit from a special tax regime. They are treated for tax purposes as non-residents, and are therefore taxable on their Belgian source income only.

The special expatriate status offers two important tax advantages to foreign executives:

- Reimbursements made by the employer to cover additional expenses incurred as a direct result of employment in Belgium are within certain limits treated as non-taxable for the expatriate. These expenses include non-recurring expenses (such as moving expenses) and recurring expenses (such as costs of education for children in primary or secondary schools, differences in costs of living, etc.); and
- Salary related to business activities carried out abroad, calculated pro rata temporis, is exempt from Belgian income tax even when borne by a Belgian employer.

Other income is taxable in Belgium only if it stems from a Belgian source.

10.2 Private income from capital

The normal tax regime of Belgian residents includes a few interesting features :

- Capital gains on privately held real estate are tax exempt (provided land has been held for more than 8 years and buildings are used as a main residence or have been held for more than 5 years);
- Capital gains on securities are tax-exempt as a rule provided they are realized within the scope of the normal management of private assets.
- Portfolio income from investments – interest and dividends – is taxed at 25%. Subject to certain conditions, a reduced rate of 15% is available for dividends paid by SME's on shares issued as from 1 July 2013.
- Copyright income up to €57,080 received by individuals will not be treated as earned income even if it relates to a work activity and will only be subject to a final 15% withholding tax.

10.3 Estate duties

Estate duties vary depending on the location of the deceased's domicile within Belgium. They are often quite high but, for certain classes of assets (including cash, art and most types of securities), taxes can be lawfully avoided by life-time gifts taxable at rates ranging from 3 to 7%, or even totally exempt.

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This brochure is intended to provide a general and simplified overview of some tax and legal incentives for inbound investment into Belgium. It should not be considered or relied upon as legal advice.

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