



COMPANY FORMATION IN BELGIUM

MAIN FORMS OF COMPANY/BUSINESS IN BELGIUM

The two main types of companies are:

- public limited liability company (NV in Dutch, SA in French);
- private limited liability company (BVBA in Dutch, SARL in French);

In the two types of companies, the partners' liability is limited to their contribution to the company.

The BVBA/SARL is most common.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

A company with a legal personality is subject to Belgian corporate income tax. In general, it is assumed that all income received by a company is business income. The standard corporate income tax rate is 33.99%. There are lower rates for small companies. However business expenses in order to obtain or safeguard business income are considered tax deductible. Other relevant characteristics of the Belgian corporate income tax:

1. Notional Interest Deduction: deduction of a yearly adjusted % of equity financing
2. Patent income deduction: 80% deduction
3. Tax losses carried forward: unlimited
4. Dividends: no withholding tax for dividends paid to companies under the EU Parent-Subsidiary Directive, limited (between 5 and 15%) withholding tax for payments to Treaty Countries, 25% withholding tax for payments to other countries
5. Interest: no withholding tax for interest paid to companies under the EU Parent-Subsidiary Directive, limited (between 5 and 15%) withholding tax for payments to Treaty Countries, 25% withholding tax for payments to other countries
6. Thin capitalisation rule: no deduction allowed for interests paid on intra-group loans exceeding a debt-to-equity ratio of 5/1
7. Reduction of originally paid capital is tax free
8. Management and commission fees paid to non-residents have to be individually reported to avoid fiscal sanctions

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

NV/SA

- Partners: at least 2
- Minimum capital: 61.500 EUR
- Paid-up capital: 1/4 with a minimum of 61.500 EUR
- Contribution in kind: chartered auditor's report
- Financial plan: obligatory
- Shares: the shares are nominative or dematerialised. Shares without voting rights are possible
- Shares register: yes
- Deed: notarial deed (registration, deposition of an extract from the memorandum of association with the Chamber of Commerce and publication in the Belgian Official Gazette)
- Shareholders' liability: limited to contribution, save exceptions
- Founder's specific liability: yes
- Transfer of shares: in principle, the shares are freely transferable, but the transferability can be limited in the articles of association or in the shareholders' agreement

- Administration/management: Board of Directors, composed of minimum 3 administrators (2 if only 2 partners). These are natural or legal persons. Appointment for maximum 6 years (reappointment is possible)

BVBA/SARL

- Partners: at least 1
- Minimum capital: 18.550 EUR
- Paid-up capital: 1/5 with a minimum of 6.200 EUR, minimum of 12.400 EUR if only one partner
- Contribution in kind: chartered auditor's report
- Financial plan: obligatory
- Shares: the shares are nominative. Shares without voting rights are possible
- Shares register: yes
- Deed: notarial deed (registration, deposition of an extract from the memorandum of association with the Chamber of Commerce and publication in the Belgian Official Gazette)
- Shareholders' liability: limited to contribution, save exceptions
- Founder's specific liability: yes
- Transfer of shares: a qualified authorization of the partners is required. Standard: majority of 1/2 of the partners holding 3/4 of the capital (after exclusion of the transferred shares)
- Administration/management: one or more managers appointed in the articles of association or by the general assembly. Time-limited of permanent appointment

STEPS IN ESTABLISHING A COMPANY IN BELGIUM

1. Draft a business/financial plan covering the first two years of operation, including a summary balance sheet.
2. Open a blocked bank account and deposit the share capital.
3. If applicable, draw up an appraisal report in which other contributions with economic value (e.g. real estate, shares in another company, etc.) are described. In such case appoint an chartered auditor to make a special report regarding the contribution
4. Get an incorporation deed drafted by a Belgian public notary (in this draft you can find articles about the founders, name and goal of the company, etc.). Make sure you have all the necessary permits to start your business.
5. The notary will file the incorporation deed for publication in the Belgian Official Gazette and obtain a corporate registration number.
6. Register the incorporation deed at the Crossroads Bank for Enterprises via a Corporate Office
7. Open a company register
8. Notify the nature and size of the activity to the VAT administration
9. Register the company with a social security fund

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

A NV/SA could formerly issue shares to bearer. Today the shares of an NV/SA can be dematerialised on a bank account and their ownership can be unknown to the company.

In general a NV/SA has the appearance of a bigger company, while a BVBA/SARL looks more modern. For other types of companies (VOF/SNC...) without limited liability there are less formalities and no obligation to publicize the annual accounts.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

Quasi contribution in kind: a report of chartered auditor is also needed for a sale of goods by a founder, partner or manager in the first two years after formation of the company if the price amounts to 10% or more of the issued capital.