BELGIUM

1. INTRODUCTION

a. Forms of Legal Entity

Since the adoption of the corporate law reform in 2019, the flexibility of the Belgian corporate law increased and the number of available legal forms was limited.

In an M&A context, the most commonly used legal forms with legal personality and limited liability are:

- the NV/SA ("NV" or "naamloze vennootschap" in Dutch, "SA" or "société anonyme" in French), a limited liability company having a minimum share capital of EUR61,500; and
- the BV/SRL ("BV" or "besloten vennootschap" in Dutch, SRL or "société à responsabilité limitée" in French), a limited liability company without minimum share capital.

Both the NV/SA and the BV/SRL are subject to ordinary Belgian corporate income tax ("CIT").

Traditionally, multinationals and foreign investors opted generally for a NV/SA, as certain corporate rules governing the predecessor of the BV/SRL were more stringent for historical reasons. It was one of the aims of the corporate law reform to make the rules regarding the BV/SRL more attractive so that it would become the logical choice for group entities (just as for the BV in the Netherlands and the GmbH in Germany).

The BV/SRL form is sometimes also preferred for foreign tax reasons (e.g. the BV/SRL may be eligible for a check the box election under US tax laws, while the NV/SA is not).

The partnership ("maatschap" in Dutch, "société simple" in French) is a legal entity without legal personality, that is transparent from a corporate income tax perspective.

b. Taxes, Tax Rates

i Corporate income tax rate

As of financial year 2020, the ordinary Belgian CIT rate amounts to 25%. It was 29.58% for financial years 2018 and 2019, and 33.99% prior to that.

Subject to strict conditions, certain small companies may benefit from a reduced CIT rate of 20% on the first tranche of EUR100,000 taxable income. To qualify as a small company, an entity may not exceed more than one of the following thresholds during two consecutive financial years (to be determined on a consolidated basis): (i) a total balance sheet of EUR4.5 million, (ii) annual turnover of EUR9 million (excluding VAT) and (iii) annual average number of 50 employees.

ii Personal income tax rates

Professional/employment income is subject to personal income tax at progressive rates of up to 50%, to be increased with municipal surcharges (ranging between 0% and 9% of the tax, depending on the municipality in which the individual is a tax resident).

Investment income (such as dividends, interest and royalties) is in principle subject to a flat rate of 30%.

Capital gains realised upon a sale of shares are usually not taxed. Only in unusual circumstances they are taxed at a rate of 33% (to be increased with municipal surcharges) (see below '7. Divestitures').

iii VAT rates

The ordinary Belgian VAT rate is 21%. Reduced rates of 12% and 6% exist for certain activities.

c. Common divergences between income shown on tax returns and local financial statements

The most common book to tax differences include:

- Expenses disallowed for tax purposes;
- Tax exempt dividends and capital gains on shares;
- Limitation on depreciation of assets for tax purposes;
- Application of interest deduction limitation rules;
- Application of tax incentives such as the innovation income deduction and investment deduction; and
- Utilisation of carried forward tax losses.

2. RECENT DEVELOPMENTS

a. Multilateral Instrument ("MLI")

Belgium ratified the Multilateral Instrument ("MLI") in June 2019. The main impact for covered tax treaties concluded by Belgium is the introduction of the principle purpose test, the extension of the definition of permanent establishment to tackle the artificial avoidance thereof and the implementation of the mandatory binding arbitration clause in case of a mutual agreement procedure. The application of the MLI should be considered on a treaty by treaty basis.

b. EU Anti-Tax Avoidance Directive ("ATAD")

The Belgian implementation of the EU Anti-Tax Avoidance Directive ("ATAD") introduced, among others, new interest limitation rules based on the fiscal EBTIDA, controlled foreign company rules, anti-hybrid mismatch rules and extension of Belgian exit taxation rules.

c. "Danish cases" of the CJEU

In the aftermath of the so called "Danish cases" decided by the Court of Justice of the European Union ("CJEU"), the Belgian tax authorities increasingly challenge the withholding tax exemption applied on outbound dividend and interest payments made by Belgian entities.

d. DAC 6

The EU directive 2018/822 ("DAC 6") regarding mandatory disclosure rules was implemented in Belgium in December 2019. Pursuant to these rules, intermediaries or, where appropriate, taxpayers, need to disclose cross border arrangements implemented as from 25 June 2018 which contain one or more of a prescribed list of hallmarks. The disclosed information is automatically exchanged between the EU Member States.

e. Tax measures in response to Covid-19

The Belgian government has introduced tax measures to alleviate the economic impact of the Covid-19 pandemic, notably:

- Temporary loss carry back regime

Belgian tax law does not provide for a general tax loss carry back regime. To strengthen solvency and liquidity, Belgian entities were under certain conditions entitled to offset tax losses incurred during assessment year 2020 or 2021 against taxable profits realised during assessment years 2019 or 2020 via the creation of a one off "carry back" reserve. The tax exempt "carry back" reserve becomes taxable in the financial year following the financial year in which it was created.

- Reconstitution reserve

Subject to strict conditions, Belgian entities are entitled to establish a tax exempt reserve during financial years 2021 to 2023 equal to the amount of accounting losses they have incurred during financial year 2020 (capped at EUR20 million). The reconstitution reserve will become partially or fully taxable in a given year to the extent the company distributes dividends, makes share buy backs or capital reductions or would record materially lower salary costs compared to the last financial year prior to the Covid-19 pandemic period (exceptions apply).

- Other measures

Several other temporary measures have been introduced, such as an increased investment deduction rate for SMEs, Tax Shelter Covid-19 and regional, provincial and local financial support measures.

Consideration of the Covid-19 measures will also be relevant in tax due diligence processes going forward.

3. SHARE ACQUISITION

a. General Comments

To acquire a business it can be envisaged to either buy the shares of a target company (share deal) or to select and buy particular assets (asset deal).

The main advantages of a share deal are that Belgian tax law provides for a capital gains tax exemption on shares and that the acquired target in principle retains the ability to utilise existing tax attributes. Generally, indeed, a direct or indirect change of control does not impact the tax attributes of a Belgian entity, provided the change of control can be justified by legitimate financial or economic needs, which is generally accepted to be the case if the level of activity and employment remains the same after the acquisition.

b. Tax Attributes

In Belgium, tax attributes (e.g. carried forward tax losses, carried forward investment deductions, carried forward innovation income deductions and carried forward dividend received deductions) can in principle be carried forward without time limit.

However, the deduction of certain tax attributes is limited for any financial year to 70% of the taxable result exceeding EUR1 million, the remaining 30% being a minimum taxable basis effectively taxed.

Tax attributes cannot be used to offset (a) that part of the taxable result that derives from abnormal or gratuitous advantages received from a related enterprise, nor (b) any increase of the taxable basis that results from a tax audit, unless the tax inspector agrees not to inflict any tax penalty. Tax adjustments will in such cases result in an effective cash tax cost

c. Tax Grouping

For financial years starting on or after 1 January 2019, Belgian tax law provides for a certain form of tax consolidation under the so-called "group contribution regime". Qualifying Belgian companies (and Belgian permanent establishments of foreign companies established in an EEA country) may offset profits against current year tax losses subject to a (direct) minimum participation requirement of 90% between the concerned group companies (or via a common parent company). The consolidation rules can only be applied if the 90% participation exists for an uninterrupted period of at least five years (specific provisions apply in case of group restructurings). A group contribution agreement has to be concluded between the concerned group companies.

Further, Belgian VATable persons that are closely linked from a financial, economic and organisational perspective could opt for a VAT grouping. A VAT group is considered as one taxpayer as a result of which transactions between members of the group are considered as internal transactions not subject to VAT. The members of the VAT group are, however, jointly and severally liable for the VAT liabilities (including interest, penalties and surcharges) of the group.

d. Tax Free Reorganisations

Belgian tax law provides for a tax neutral regime applicable to qualifying corporate restructurings (such as mergers and (partial) demergers). Both domestic and cross border EU (de)mergers are eligible to benefit from the tax neutral treatment provided that the restructuring does not have tax avoidance or tax evasion as its main objective or one of its main objectives. Additionally, in the case of a cross border EU merger, the transaction will only be tax neutral to the extent that the acquired assets are maintained in a Belgian establishment of the receiving or absorbing company.

If a tax neutral (de)merger takes place, the carried forward tax losses and unutilised dividend received deductions of the companies concerned are reduced based on the proportionate net fiscal value of the receiving/transferring company prior to the merger compared to the sum of the net fiscal value of the receiving and transferring company both prior to the merger.

e. Purchase Agreement

On the Belgian M&A market, it is common to cover tax risks by including representations and warranties on tax matters, possibly combined with specific indemnities.

The agreement often stipulates that a tax claim can be filed until a certain period (e.g. three months) after the moment the right of the tax authorities to assess or claim any taxes in respect of the relevant matter is barred by all applicable statutes of limitation. Although the ordinary statute of limitations in Belgium is three years, the applicable period can be much longer in certain instances (e.g. a seven year period in case of fraud, specific longer periods for withholding taxes and when information is received in the framework of cross border exchange of information).

It should also be indicated that indemnifications paid by the sellers to the purchaser are considered to be a reduction of the purchase price.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

In Belgium, no transfer tax, stamp duty or registration duty are in principle due on a share acquisition.

Share acquisitions may under certain conditions be subject to Belgian stock exchange tax if concluded or executed through a professional intermediary, whether or not established in Belgium. The ordinary stock exchange tax rate amounts to 0.35% per party per transaction, however this is capped at EUR1,600.

g. Share Purchase Advantages

- The seller may benefit from a capital gains tax exemption on shares.
- The buyer may benefit from the tax attributes of the target company (subject to change of control rules and the minimum taxable base).
- Existing contracts concluded by the target company remain valid (in principle no counterparty consents or renegotiations except if required by contract).
- Since 2019, the buyer may apply the Belgian tax consolidation regime as of the fifth financial year following the share acquisition (subject to strict conditions).

h. Share Purchase Disadvantages

- The buyer is not entitled to depreciate the acquired shares in the target company and there is no step up in value of the assets at the level of the target entity (and thus no increased tax deductible depreciation).
- The historical tax liabilities remain with the Belgian target company.

4. ASSET ACQUISITION

a. General Comments

From a corporate perspective, an asset deal could be structured either as a transfer 'at singuli' (i.e. a transfer asset by asset) or as a transfer of a business or a universality of goods.

In each case, sellers will in principle be taxable on the (latent) gains realised on the transferred assets at the ordinary CIT rate of 25%. It is possible to offset the realised capital gains against available tax attributes, but subject to an important minimum taxable basis rule: 30% of the taxable profit of a company above EUR1 million is effectively taxed.

Buyers obtain a step up in value on the acquired assets, which can lead to higher tax deductible depreciation and/or amortisation.

Where only a part of the activities of a company are sold, sellers sometimes carve out the assets to be transferred prior to the transaction (by means of a contribution or a demerger of a business unit), in order to prepare a third party transaction that can be structured as a share deal. Subject to several stringent conditions, the ruling committee accepts the neutrality of such carve out and it is highly recommended to have the tax treatment confirmed in a tax ruling.

Asset transfers are in principle subject to VAT. Where the transfer qualifies as a transfer of a going concern, no VAT applies under certain conditions. To qualify as a transfer of a going concern, the transferred assets should constitute a 'business' or a 'branch of activity' allowing the buyer to carry on an autonomous economic activity.

b. Purchase Price Allocation

Belgian tax law does not provide for specific rules on purchase price allocation.

Seller and buyer typically agree on the purchase price allocation in the context of the asset purchase agreement negotiations. Although not required, it is recommended to have a third party valuation to support the purchase price allocation in case of a challenge by the Belgian tax authorities.

c. Tax Attributes

In the case of an asset acquisition, the tax attributes of the seller are not transferred to the buyer.

d. Tax Free Reorganisations

A transfer of a business unit to a Belgian or EU resident company in exchange for shares may benefit from CIT neutrality. In order to benefit from this tax neutral regime the transferred assets and liabilities need to qualify as a branch of activity, meaning that the business unit should be capable to function autonomously from a technical and operational perspective.

The transfer could also be structured as a partial demerger, in which case it is not required that the transferred assets constitute a branch.

In any case, the restructuring must not have tax evasion or avoidance as its principal or one of its principal purposes.

In case of a tax neutral contribution of a branch of activity, the receiving company will not realise a step-up in basis and will not acquire any tax attributes of the transferring company. The tax attributes of the transferring company will not be limited as a result of the transfer, while the carried forward tax losses and carried forward dividend received deduction that the receiving entity had prior to the contribution will be limited proportionally.

In the case of a tax neutral demerger, the carried forward tax losses and unutilised dividend received deductions of the companies concerned are reduced based on the proportionate net fiscal value of the receiving/transferring company prior to the demerger compared to the sum of the net fiscal value of the receiving and transferring company both prior to the demerger.

In any case, also the potential impact of VAT and registration duties has to be carefully considered.

e. Purchase Agreement

Asset purchase agreements generally include clauses regarding the application or not of the transfer of a going concern regime for VAT purposes and covering the consequences if the tax authorities would disagree with the applied regime (e.g. who bears interest and penalties).

Where the transaction concerns a purchase of assets that constitute a business unit allowing the preservation of a client base, the transfer is in principle only opposable vis-à-vis the tax authorities as of the end of the month following the month in which a certified copy of the asset purchase agreement is notified to the tax authorities. Furthermore, Belgian tax law provides that a buyer is jointly liable towards each of the relevant authorities for tax, non-tax and social security liabilities of the seller up to the amount of the purchase price paid prior to the date the transfer becomes opposable. The deferred enforceability and joint liability do not apply if the asset purchase agreement is notified to the concerned authorities together with a clearance certificate, confirming that at the level of the selling entity there are no outstanding tax debts, no announced or pending tax audits and no request of information has been sent on the date that the certificate is issued. The asset purchase agreement will include clauses regarding these rules and covering the potential consequences thereof.

In case of an asset acquisition 'at singuli' (i.e. asset per asset), the asset purchase agreement should clearly indicate that the (latent) tax liabilities remain allocated to the seller.

f. Depreciation and Amortisation

A buyer can depreciate the acquired assets on their acquisition value. Consequently, if the purchase price of the assets is higher than the book value at the level of the seller, the buyer realises a step up in value which may result in increased tax deductible depreciation and/or amortisation.

The applied depreciation rates should be based on the anticipated useful economic lifetime of the concerned assets. For investments made as from 2020, a Belgian company can only use the straight line method (i.e. linear method).

Belgian tax and accounting law allow amortisation of goodwill arising in the context of an asset deal.

Although Belgian tax law provides that amortisation of goodwill may not be spread over less than five years, Belgian tax authorities usually take the view that the depreciation period should be spread over a period of 10 years if the goodwill in essence relates to a customer base.

g. Transfer Taxes, VAT

In cases where the transferred assets comprise immovable property located in Belgium, transfer taxes are due (at a rate of 12% if the immovable property is located in Flanders and 12.5% if the immovable property is located in the Walloon Region or the Brussels-Capital Region). An exemption may apply if the transfer is part of a tax neutral reorganisation.

An asset deal is subject to Belgian VAT at the ordinary rate of 21%. If the transferred assets form however a 'universality of goods' or a 'branch of activities', the transfer may fall outside the scope of VAT.

h. Asset Purchase Advantages

- The buyer chooses which assets and liabilities will be acquired, in particular if the transaction is structured as an 'at singuli' transfer ("cherry-picking" of selected assets).
- The transferred assets can be depreciated or amortised based on the purchase price (i.e. realisation of a step up).
- Profit or losses of the acquiring entity can be offset against profit or losses generated by the acquired business.

i. Asset Purchase Disadvantages

- The seller will be taxable on (latent) gains realised upon the asset deal, which will generally be reflected in the purchase price.
- The tax attributes of the seller are not transferred to the buyer.
- Tax clearance certificates to be requested and transfer agreement to be notified to the tax authorities to avoid joint liability and to render the transfer opposable vis-à-vis the Belgian tax authorities.
- Possible need to renegotiate existing supply, employment and technology contracts.

5. ACQUISITION VEHICLES

a. General Comments

Both domestic and foreign acquisition vehicles are used in transactions involving a Belgian target. The choice of the acquisition vehicle depends of the facts and circumstances.

b. Domestic Acquisition Vehicle

Belgium has favourable rules in place for Belgian acquisition vehicles, notably the participation exemption regime (i.e. the dividend received deduction) and the capital gains tax exemption on shares.

A Belgian acquisition vehicle with a direct participation of at least 90% in a Belgian target could benefit from the Belgian group contribution regime, a form of tax consolidation. The group contribution regime is however only available if the 90% participation exists during an uninterrupted period of five years. Prior to the five year period, no tax consolidation is available (without the possibility to look back to previous years once the waiting period has been satisfied).

Alternatives to realise a debt pushdown are sensitive from a Belgian tax perspective. For example, the tax authorities generally refuse the deductibility of interest payments on a loan linked to financing equity or dividend distributions.

The Belgian tax implications of domestic acquisition vehicles should be carefully considered (e.g. beneficial ownership, substance, tax abuse), which may become even more important in the light of the Commission's proposal for ATAD3 (i.e. the so called "unshell" directive).

c. Foreign Acquisition Vehicle

Transaction structures involving Belgian targets also regularly include foreign transaction vehicles.

Next to the dividend and interest withholding tax ("WHT") exemptions based on the European Parent Subsidiary Directive and Interest Royalty Directive, the extensive treaty network of Belgium providing for reduced WHT rates or WHT exemptions for dividends and interests as well as domestic exemptions should be considered when determining the appropriate acquisition vehicle for a Belgian investment.

The Belgian tax implications of the use of foreign holdings and the applications of the exemptions or reductions must be carefully considered (e.g., beneficial ownership, substance, tax abuse), which may become even more important in the light of the Commission's proposal for ATAD3 (i.e. the "unshell" directive).

A foreign buyer could also opt to structure the acquisition as an asset acquisition by a Belgian branch, which is in our experience not a commonly used option on the Belgian market. The branch will be subject to Belgian corporate income tax at a rate of 25%. In such case, as no dividends are distributed from the branch to the head office, no Belgian WHT is due. Moreover, tax law of the head office's country may provide for certain consolidation rules.

d. Partnerships and joint ventures

In Belgium, joint ventures could be established by using a legal entity (subject to Belgian corporate income tax) or by using a partnership (treated as tax transparent for Belgian tax purposes).

In the Belgian M&A context, legal entities are typically used.

e. Strategic vs Private Equity Buyers

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6. ACQUISITION FINANCING

a. General Comments

Both equity and debt funding are common in Belgium and often a mix is applied. As noted below, there are several limitations on interest deductions.

In the past, equity funding was stimulated in Belgium by the so called "notional interest deduction". This regime became however less important and is since 1 January 2018 only applied on the increase in equity and no longer on the entire amount of the equity.

b. Foreign Acquirer

This section is left intentionally blank.

c. Debt

Belgian tax law does not impose a general debt to equity ratio.

In addition to the interest limitation rules set out below, the withholding tax ("WHT") treatment of interest on debt funding should also be considered. Indeed, interest payments made by a Belgian company are in principle subject to Belgian WHT at the ordinary rate of 30%. Belgian tax law, the Interest Royalty Directive as transposed into Belgian tax law and tax treaties may provide for interest WHT exemptions or reduced WHT rates. The availability thereof is however subject to anti-abuse provisions and beneficial ownership.

i Limitations on Interest Deductions

In Belgium, interest expenses incurred to finance acquisitions are in principle tax deductible provided that the general deductibility rules are satisfied. In addition, the interest rate should meet at arm's length conditions.

In addition, Belgian tax law provides for the following interest limitation rules:

- 5:1 debt to equity ratio

Until financial year 2018, Belgium had a 5:1 debt to equity ratio that applied to all intragroup debt. In accordance with this old rule, interest relating to intragroup debt exceeding the threshold was not tax deductible. The 5:1 debt equity ratio has in general been abolished, but remains applicable for direct or indirect payments to no or low tax jurisdictions as well as for intercompany loans concluded prior to 17 June 2016 that have not been substantially changed thereafter.

- 30% EBITDA rule

Following the implementation of ATAD, the 30% EBITDA rule is applicable as of financial years starting on or after 1 January 2019. The net interest expense (i.e. the interest expenses minus interest income, to be determined on a Belgian consolidated level) relating to (i) external and (ii) foreign intercompany debt is non-deductible to the extent it exceeds the higher of EUR3 million or 30% of the (fiscal) EBITDA.

- 1:1 debt-to equity ratio

This additional thin capitalisation rule applies in case of financing by a domestic or foreign individual shareholder or director, or by corporate directors located outside the EEA. Interest relating to debt in excess of this ratio is recharacterised as a non-deductible dividend.

ii Related Party Debt

Related party debt should be at arm's length conditions to avoid transfer pricing adjustments or the non-deductibility of interest charges.

For interest paid on loans without fixed duration, the deductibility is generally limited to an annually determined reference rate, which is currently 4.07%.

iii Debt Pushdown

A Belgian acquisition vehicle with a direct participation of at least 90% in a Belgian target could benefit from the Belgian group contribution regime, a form of tax consolidation. The group contribution regime is however only available if the 90% participation exists during an uninterrupted period of five years. Prior to the five year period, no tax consolidation is available (without the possibility to look back to previous years once the waiting period has been satisfied).

Alternatives to realise a debt pushdown are sensitive from a Belgian tax perspective. For example, the tax authorities generally refuse the deductibility of interest payments on a loan linked to the financing of equity or dividend distributions and such refusals have been upheld by recent case law.

d. Hybrid Instruments

The use of hybrid financial instruments is targeted by the Belgian hybrid mismatch rules implementing ATAD.

e. Other Instruments

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f. Earn-outs

Earn-outs are generally structured as a purchase price adjustment in the Belgian M&A market, as a consequence of which the adjustment may qualify as an additional tax exempt compensation for the sale of the shares.

The conditions and the mechanics of the adjustment should be carefully analysed to verify whether the price adjustment reflects a reassessment of the initial purchase price and should not be considered as variable professional income for sellers that remain involved in the management of the target company.

7. DIVESTITURES

a. Tax Free

The divestiture of shares by a corporate or individual seller may be tax exempt.

A corporate seller subject to Belgian CIT may benefit from the capital gains tax exemption on shares provided that the following conditions are fulfilled: (i) one year holding period; (ii) a minimum participation of 10% or with an acquisition value of at least EUR2.5 million; and (iii) the subject to tax condition at the level of the target entity.

Capital gains on shares realised by individual sellers may be tax exempt if they are realised within the framework of normal management of the seller's private wealth, and provided that it does not concern a divestment of a substantial shareholding sold to a corporate buyer established outside the EEA.

b. Taxable

i Divestiture of shares

Capital gains realised by a corporate shareholder that cannot benefit from the capital gains tax exemption will be taxed at the ordinary CIT rate of 25%.

For individual sellers, if capital gains are considered to be realised outside the framework of normal management of the seller's private wealth, the capital gains will be taxed at a rate of 33%, to be increased with municipal surcharges.

If the capital gains are realised in the course of a professional activity of the individual seller, they will be taxed at progressive rates up to 50%, to be increased with municipal surcharges.

ii Divestiture of assets

Gains realised on the transferred assets will be subject to the ordinary corporate income tax rate of 25% at the level of the transferring company. The transferring company may offset available tax attributes against the capital gains (subject to the minimum taxable base). A rollover regime may be available provided that the entire sales price is reinvested, in which case the taxation of the capital gains is spread over the depreciation period of the reinvested assets (i.e. spread taxation).

c. Cross Border

This section is left intentionally blank.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Belgium applies a worldwide tax system.

As a matter of principle, the total worldwide profit realised by a Belgian resident company constitutes taxable profit.

Profits generated by permanent establishments a company has in a jurisdiction with whom Belgium has concluded a double taxation convention are generally exempt from tax in Belgium.

b. CFC Regime

Following the mandatory implementation of ATAD, Belgium has controlled foreign company ("CFC") rules in place that have applied since 1 January 2019. A Belgian company will be taxed on the "non-distributed profits" of a foreign company that is considered a CFC where such profits arise from "artificial arrangements" that have been put in place for the main purpose of obtaining a tax advantage.

An artificial arrangement is deemed to exist when certain assets or risks can be identified that are owned by the CFC, whereas the majority of decision making functions are exercised by the controlling Belgian entity. Belgian tax law provides for measures preventing double taxation.

i Definition of a CFC

A foreign company will be considered a CFC if the following conditions are cumulatively satisfied:

- A Belgian company holds a direct or indirect participation of more than 50% of the capital or voting rights, or is entitled to receive at least 50% of the profit of the foreign entity; and
- The foreign entity is either not subject to tax in its state of residence or is subject to income tax that is less than half of the income tax of the foreign entity computed based on Belgian tax rules.

A foreign entity established in a jurisdiction which is included in the EU list of non-cooperative jurisdictions at the end of the taxable period also qualifies as a CFC without the above conditions having to be fulfilled.

ii Taxation of undistributed profits

If the CFC rules apply, the undistributed profits of the CFC that arise from artificial arrangements set up with the essential aim of obtaining a tax advantage are attributed to the Belgian parent company.

c. Foreign Branches and Partnerships

The profit of a foreign establishment of a Belgian resident company will in principle be exempt from Belgian corporate income tax based on the tax treaties concluded by Belgium which are generally in line with the OECD Model Convention.

Foreign partnerships without separate legal personality may be treated as tax transparent entities for Belgian tax purposes as a result of which tax is not levied at the level of the partnership but at the level of the concerned partners.

d. Cash Repatriation

Dividends distributed by a Belgian company to a foreign entity are in principle subject to Belgian WHT at the ordinary rate of 30%. A WHT exemption or reduced WHT rate may be available based on Belgian tax law, the implementation of the EU Parent Subsidiary Directive and/or tax treaties concluded by Belgium. The application of a WHT exemption or reduced rate must be carefully considered in the light of anti-abuse rules as well as beneficial ownership and substance requirements.

Where cash repatriation is performed by means of upstream loans, the impact of the financial assistance rules has to be reviewed.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Unlike other countries, Belgian tax law does not equate the sale of shares of a real estate company (i.e. company whose main assets consist in real estate) with the sale of the real estate. Hence, capital gains realised upon the sale of shares in a real estate company are in principle exempt from Belgian corporate income tax (subject to certain conditions) and are not subject to transfer tax.

Capital gains that a company realises on the direct sale of real estate are in principle subject to Belgian corporate income tax at the ordinary rate of 25% (deferred taxation may be available subject to certain conditions, such as the reinvestment of the entire sales price in depreciable (in)tangible fixed assets located in the European Economic Area within a period of five years). In addition, the direct acquisition of the real estate in full ownership is subject to transfer taxes at a rate of 12% or 12.5% (depending on the location of the real estate).

b. CbC and Other Reporting Regimes

i CbC reporting

Belgium introduced a CbC reporting obligation for Belgian resident companies belonging to a multinational enterprise ("MNE") exceeding certain thresholds (see below, Section 10. Transfer Pricing).

ii Reporting obligation for payments to tax havens

Belgian resident companies that made (in)direct payments exceeding EUR100,000 in a given financial year to so called tax havens need to report these payments in an attachment to the annual corporate income tax return. In the absence of reporting, the deductibility of the relevant payments may in principle be refused.

10. TRANSFER PRICING

i Belgian transfer pricing rules

All intercompany arrangements have to be at arm's length conditions to avoid transfer pricing adjustments. Although there are no specific rules regarding transfer pricing documentation (except CbC Reporting, Master File and Local File as set out below), it is highly recommended to document the at arm's length character of intercompany arrangements as a preparation for tax audits.

The Belgian transfer pricing rules can be summarised as follows:

- Any part of the taxable result which derives from an abnormal or benevolent advantage received from a related enterprise constitutes a minimum taxable basis of the Belgian entity (i.e. it cannot be offset against any available tax attributes);
- Any abnormal or benevolent advantage granted is added to the taxable base of the Belgian entity, unless it is taken into account to determine the taxable income of the receiving entity established in Belgium; and
- Non-arm's length intercompany transactions may also be challenged on the basis of the general tax deductibility rules.

ii Belgian transfer pricing documentation

Belgium applies the three tiered approach to transfer pricing documentation proposed by the OECD according to which multinational enterprises need to submit a CbC report/notification, a master file and a local file in case certain thresholds are exceeded.

- CbC reporting

A Belgian entity belonging to a multinational enterprise ("MNE") may be required to file a CbC report and/or CbC notification form in case it belongs to a MNE having a consolidated revenue that exceeds EUR750 million in the financial year preceding the last closed financial year.

- Master file and local file

A Belgian resident company belonging to a MNE may also be required to submit a master file and local file if it exceeds one of the following thresholds on a standalone basis in the financial year preceding the last closed financial year:

- Combined operating and financial income of EUR50 million (excluding non-recurrent income); or
- A balance sheet total of EUR1 billion; or
- An annual average of 100 full-time equivalent employees.

The local file should be attached to the Belgian resident company's annual corporate income tax return. The master file should be submitted within 12 months after the reporting period of the MNE.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Belgian tax law has implemented the rules on hybrid entities as prescribed in the ATAD as of 1 January 2019.

A hybrid entity is defined as an entity or arrangement that is regarded as a taxable entity under the laws of one jurisdiction and a transparent entity under the laws of another jurisdiction. Hybrid entities are not commonly used in Belgium.

b. Use of Hybrid Instruments

As of 1 January 2019, hybrid mismatch rules were introduced in Belgium following the implementation of ATAD. Belgian tax law defines a hybrid mismatch as an arrangement giving rise to (i) a double deduction of expenses for both a Belgian company (or Belgian PE) and a foreign enterprise (or establishment thereof) or (ii) a deduction of expenses without a corresponding inclusion of income at the level of the beneficiary.

These rules intend to target hybrid mismatches (i) within the same entity, (ii) between associated entities and (iii) arrangements between unrelated parties which may qualify as a 'structured arrangement'. A 'structured arrangement' is defined as a hybrid mismatch whereby this outcome is priced into the terms of the arrangement or when the non-related parties act in the framework that has been designed to produce such a result. However, there is no "structured arrangement" if the Belgian entity could not reasonably have been expected to be aware of the hybrid mismatch and derived no benefit from the arrangement.

The hybrid mismatch rules provide for (i) the denial of the deduction of costs relating to payments made in the context of a hybrid mismatch, (ii) the inclusion of the profits received in the context of a hybrid mismatch in the Belgian corporate income tax base and (iii) a limitation of the use of a foreign tax credit in the case of a hybrid transfer.

c. Principal/Limited Risk Distribution or Similar Structures

Belgium typically follows the OECD methodology with respect to transfer pricing. It is important to establish solid and coherent transfer pricing documentation substantiating the transfer prices used.

d. Intellectual Property

i Innovation income deduction

In 2016, Belgium introduced the innovation income deduction regime (replacing the 'patent income deduction') which is in line with the OECD modified nexus approach. According to this regime, a Belgian resident company can deduct 85% of its net qualifying IP income on qualifying IP rights. The innovation income deduction can, among others, be applied on the income derived from the following IP of which the company has the full ownership, co-ownership, usufruct or license: patents, breeders' rights, orphan drugs, data and market exclusivity, copyrighted software (subject to certain conditions).

ii Depreciation of IP

For Belgian tax purposes, intangible fixed assets must be amortised over a period of at least five years (except research and development expenses, for which the minimum amortisation period is three years).

e. Special Tax Regimes

In addition to the innovation income deduction, Belgian resident company's may benefit from the following (R&D) tax incentives:

i R&D investment deduction / tax credit

Belgian resident companies can choose between an increased investment deduction (i.e. a deduction from a company's tax base on top of the normal tax depreciation) and a tax credit for environmentally friendly R&D investments and qualifying patents.

ii Partial wage withholding tax exemption for qualifying R&D personnel

A Belgian resident company does not need to remit 80% of the payroll tax withheld from the salary of qualifying R&D personnel (subject to strict conditions and formalities).

12. OECD BEPS CONSIDERATIONS

Where the BEPS action plan is implemented, the Belgian tax authorities generally seek to adopt and follow OECD guidelines with local adaptation (either directly or via an EU directive that harmonises the implementation throughout the European Union).

13. ACCOUNTING CONSIDERATIONS

This section is left intentionally blank.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Dividend distributions by a BV/SRL are subject to a net asset test (i.e. no distribution may occur if it would result in the net assets of the company becoming negative) and a liquidity test (i.e. no distribution may occur if the company would no longer be able to pay its debts). Dividend distributions by a NV/SRL are only limited by an asset test.

As a rule, dividend distributions by a Belgian resident company are subject to Belgian withholding tax at a rate of 30% (WHT exemptions or reduced WHT rates may apply based on domestic tax law, EU Parent Subsidiary Directive as transposed into Belgian tax law and/or tax treaties, subject to the application of anti-abuse provisions and considerations of beneficial ownership and substance).

As of 1 January 2018, a reimbursement of capital by a Belgian resident company is deemed to be proportionally paid out of the existing fiscally paid-up capital and the reserves. To the extent the capital reimbursement is attributed to reserves, it is considered to be a dividend distribution for tax purposes on which in principle 30% Belgian WHT will be due, unless a WHT exemption or a reduced WHT rate is available.

Following the attribution rules, a capital reimbursement may in certain circumstances for tax purposes be imputed to a tax free reserve, which may trigger a corporate income tax liability.

b. Application of Regional Rules

The tax rules relevant in M&A transactions are generally federal rules that apply throughout the country. Certain regional rules may however be relevant (e.g. real estate transfer taxes at a rate of 12% if the immovable property is located in Flanders and 12.5% if the immovable property is located in the Walloon Region or the Brussels-Capital Region).

c. Tax Rulings and Clearances

There is an extensive ruling practice in Belgium.

Tax rulings are often requested to obtain certainty regarding the tax treatment of a particular transaction (e.g. tax neutrality of a pre-transaction carve-out, application of anti-abuse provisions).

A request for a tax ruling is submitted to an autonomous service of the Belgian Federal Public Service Finance prior to the implementation of the transaction (i.e. the situation must not yet have generated any tax consequences). The process consists of an informal phase (which might be on a no-names basis), followed by a formal ruling application.

It takes generally four to six months to finalise the ruling process. A ruling is valid for five years but can be renewed.

A tax ruling is in principle binding vis-à-vis the Belgian tax authorities. The authorities may however review whether the ruling has been delivered based on an accurate and complete description of the facts and whether the ruling is correctly implemented.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	5 / 15	5	5	[1]
Argentina	10 / 15	0 / 12	3 / 5 / 10 / 15	[1], [2], [3]
Armenia	5 / 15	0 / 10	8	[4], [5]
Australia	15	10	10	
Austria	15	15	10	[6]
Azerbaijan	5 / 10 / 15	0 / 10	5 / 10	[7], [20], [9]
Bangladesh	15	0 / 15	10	[10]
Belarus	5 / 15	0 / 10	5	[1], [11]
Bosnia and Herzegovina	10 / 15	15	10	[1]
Brazil	10 / 15	0 / 10 / 15	10 / 15 / 20	[4], [13], [14]
Bulgaria	10	0 / 10	5	[15]
Canada	5 / 15	0 / 10	0 / 10	[4], [16], [17]
Chile	0 / 15	5 / 15	5 / 10	[4], [18], [19]
China	5 / 10	0 / 10	7	[1], [20]
Croatia	5 / 15	0 / 10	-	[4], [15]
Cyprus	10 / 15	0 / 10	-	[1], [20]
Czech Republic	5 / 15	0 / 10	5 / 10	[1], [15], [21]
Denmark	0 / 15	10	-	[1]
Ecuador	15	0 / 10	10	[15]
Egypt	15 / 20	15	15 / 25	[1], [22]
Estonia	5 / 15	0 / 10	5 / 10	[1], [20], [19]
Finland	5 / 15	10	5	[1], [23]
France	10 / 15	15	-	[4], [12]
Georgia	5 / 15	0 / 10	5 / 10	[1], [15], [24]
Germany	15	0 / 15	0	[1], [8]
Greece	5 / 15	5 / 10	5	[1], [25]
Hungary	10	0 / 15	-	[26]
Iceland	5 / 15	0 / 10	-	[4], [18]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
India	15	10 / 15	20	[27]
Indonesia	10 / 15	0 / 10	10	[1], [20]
Ireland	0	15	-	
Israel	15	15	10	
Italy	15	0 / 15	5	[20]
Japan	0 / 10	0 / 10	-	[4], [28]
Kazakhstan	5 / 15	0 / 10	10	[4], [20]
Korea, Republic of	15	0 / 10	10	[20]
Latvia	5 / 15	0 / 10	5 / 10	[1], [19], [20]
Lithuania	5 / 15	0 / 10	5 / 10	[1], [19], [20]
Luxembourg	10 / 15	0 / 15	-	[1], [29]
Macedonia	0 / 5 / 15	0 / 10	10	[1], [4], [28]
Malaysia	15	10	10	[30]
Malta	15	0 / 10	0 / 10	[23], [31]
Mauritius	5 / 10	0 / 10	-	[4], [2]
Mexico	0 / 10	0/ 5 / 10	10	[4], [32]
Moldova	15	0 / 15	-	[26]
Mongolia	5 / 15	0 / 10	5	[4], [2]
Montenegro	10 / 15	15	10	[1]
Netherlands	5 / 15	0 / 10	-	[4], [33]
New Zealand	15	10	10	
Nigeria	12,5 / 15	12,5	12,5	[4]
Norway	0 / 5 / 15	0 / 10	-	[34], [28]
Pakistan	15	0 / 15	0 / 15 / 20	[35], [36]
Philippines	10 / 15	0 / 10	15	[4], [20]
Poland	0 / 10	0 / 5	5	[4], [20]
Portugal	15	15	10	
Romania	5 / 15	0 / 10	5	[1], [20]
Russia	10	0 / 10	-	[20]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Serbia	10 / 15	15	10	[1]
Singapore	15	10	5	
Slovakia	5 / 15	0 / 10	5	[1], [20]
Slovenia	5 / 15	0 / 10	5	[1], [20]
South Africa	5 / 15	0 / 10	-	[1], [15]
Spain	0 / 15	0 / 10	5	[1], [37]
Sri Lanka	15	0 / 10	10	[20]
Sweden	5 / 15	0 / 10	-	[1], [5]
Switzerland	0 / 15	0 / 10	-	[4], [28]
Taiwan	10	0 / 10	10	[45]
Thailand	15 / 20	0 / 10 / 25	5 / 15	[1], [38], [39]
Tunisia	5 / 15	0 / 5 / 10	11	[4], [40]
Turkey	15 / 20	15	10	[4]
Ukraine	5 / 15	0 / 2 / 10	0 / 10	[41], [42], [43]
United Kingdom	0 / 10 / 15	0 / 10	-	[44], [28]
United States	5 / 15	0 / 15	-	[4], [26]
Venezuela	5 / 15	0 / 10	5	[1], [26]
Vietnam	5 / 10 / 15	0 / 10	5 / 10 / 15	[45], [20], [46]

In addition to the jurisdictions included in the below table, Belgium also concluded tax treaties with Algeria, Bahrain, Gabon, Ghana, Hong Kong, Kosovo, Kuwait, Kyrgyzstan, Morocco, Rwanda, San Marino, Senegal, Seychelles, Turkmenistan, United Arab Emirates and Uzbekistan that are in force.

Footnotes	
[1]	Dividends – Unless indicated otherwise, the lowest rate in this column applies when the receiving company holds a participation of at least 25% of the capital (or voting rights) of the distributing company (depending on the applicable tax treaty, additional conditions may apply, such as a minimum holding period).
[2]	Interest – Subject to strict conditions, the 0% rate applies among others, to interest (i) on trade receivables, (ii) on loans granted by financial institutions, or (iii) paid to the other contracting state, a political subdivision or a local authority thereof.
[3]	Royalties – The 3% rate applies to royalty payments for the right to use news reporting. The 5% rate applies to royalty payments for the use or the right to use copyright relating to literary, artistic or scientific work (except for royalties relating to films, movies or television). The 10% rate applies to royalty payments for, among others, computer software, patents and trademarks.

Footnotes	
[4]	Dividends – Unless otherwise indicated, the lowest rate in this column applies if the receiving company holds a participation of at least 10% of the capital (or voting rights) of the distributing company (depending on the applicable tax treaty, additional conditions may apply, such as a minimum holding period). Macedonia: the 5% rate (and not the 0% rate) applies if the receiving company holds a participation of at least 10%.
[5]	Interest – The 0% rate applies to, among others, interest on loans granted by financial institutions (subject to conditions).
[6]	Royalties – The 10% rate applies if the company receiving the royalties holds a participation in the distributing company of more than 50%.
[7]	Dividends – The 5% rate applies if the receiving company holds an (in)direct participation of at least 30% of the capital of the distributing company and has invested at least an amount equivalent to USD500,000 in the distributing company. The 5% rate also applies if the receiving company has invested at least an amount equivalent to USD10 million in the distributing company. The 10% rate applies if the receiving company holds an (in)direct participation of at least 10% of the capital of the distributing company and has invested at least an amount equivalent to USD75,000 in the distributing company. The 15% rate applies in all other cases.
[8]	Interest – The 0% rate applies if interest is paid to an enterprise (except if the receiving entity has a participation of at least 25% in the entity paying the interest).
[9]	Royalties – The 5% rate applies to royalty payments for copyright relating to literary or artistic work including. The 10% rate applies in all other cases.
[10]	Interest – The lowest rate in this column applies to interest on trade receivables (subject to conditions).
[11]	Interest – The 0% rate applies to, among others, interest beneficially owned by a resident of the other contracting state (subject to conditions).
[12]	On 9 November 2021, Belgium and France signed a new tax treaty which is expected to enter into force on 1 January 2023 at the earliest. The new tax treaty foresees the following: • Dividends – The 0% rate applies if the receiving company holds a direct participation of at least 10% for an uninterrupted period of 365 days in the distributing company. In all other cases, a rate of 12.8% will apply. • Interest – Interest payments will no longer be taxed in the source country.
[13]	Interest – The 0% rate applies to interest on loans granted by the government. The 10% rate applies to interest on loans granted by financial institutions (subject to conditions).
[14]	Royalties – The 10% rate applies to royalty payments for copyright. The 20% rate applies to royalty payments for trademarks.
[15]	Interest – The 0% rate applies to, among others, interest (i) on loans granted by the government or local authorities, (ii) on trade receivables, and (iii) loans granted by financial institutions not represented by bearer securities.
[16]	Interest – The 0% rate applies, among others, to (i) interest paid to the state and local authorities and (ii) interest related to sales on credit (not paid between affiliated companies).
[17]	Royalties – The 0% rate applies to royalty payments for the right to use copyright (excluding cinematographic films), compute software, patents and know-how.
[18]	Interest – The 5% rate applies to interest on loans from financial institutions, publicly traded securities and sale of equipment on credit. The 15% rate applies in all other cases.

Footnotes	
[19]	Royalties – The 5% rate applies to royalty payments for the use or the right to use industrial, commercial or scientific equipment. The 10% rate applies in all other cases.
[20]	Interest – The 0% rate applies to, among others, interest paid to the government, a political subdivision or a local authority.
[21]	Royalties – The 5% rate applies to royalty payments for the use or the right to use industrial, commercial or scientific equipment. The 10% rate applies to, among others, copyright, software, patents, trademarks and know-how.
[22]	Royalties – The 25% rate applies to royalty payments for trademarks. The 15% rate applies in all other cases.
[23]	Royalties – The reduced rate applies to royalty payments for, among others, patents and trademarks.
[24]	Royalties – The 5% rate applies to royalty payments made to a company. The 10% rate applies in all other cases.
[25]	Interest – The 5% rate applies to interest on loans (not represented by bearer securities) granted by financial institutions. The 10% rate applies in all other cases.
[26]	Interest – The 0% rate applies to interest on, among others, trade receivables and deposits (not represented by bearer securities) with financial institutions.
[27]	Interest – The 10% rate applies to interest on loans granted by financial institutions. The 15% rate applies in all other cases.
[28]	Interest – The 0% rate applies to, among others, interest paid to an enterprise or to the government, a political subdivision or a local authority.
[29]	Interest – The 0% rate applies to interest paid to a company established in the other contracting state, except if the latter company holds a(n) (in)direct participation of at least 25% in the distributing company (in which case the 15% rate applies).
[30]	Interest – The 10% rate applies to interest paid on a loan granted to an enterprise carrying out an industrial activity.
[31]	Interest – The 0% rate applies to interest paid on trade receivables and interest paid to the state of Malta, its central bank or other public institution.
[32]	Interest – The 0% rate applies to, among others, interest paid to a pension fund or to the state of Mexico, a political division thereof or a local authority. The 5% rate applies to interest on loans granted by financial institutions. The 10% rate applies to all other cases.
[33]	Interest – Subject to conditions, the 0% rate applies to, among others, interest (i) paid to an enterprise, (ii) on trade receivables, or (iii) on loans granted by financial institutions.
[34]	Dividends – The 0% rate applies in case the receiving company holds a participation of at least 10% of the capital of the distributing company for an uninterrupted period of 12 months. The 5% rate applies if the beneficial owner is a pension fund (subject to conditions). The 15% rate applies in all other cases.
[35]	Interest – The 0% rate applies to interest paid to the central bank of Pakistan, to interest on loans paid to the government or to a financial institution owned or controlled by the government of the other contracting state.
[36]	Royalties – The 0% rate applies to royalty payments for the use or the right to use copyright (excluding cinematographic films). The 15% rate applies to royalty payments for technical know-how. The 20% rate applies to royalty payments for, among others, trademarks and for the use or the right to use industrial, commercial or scientific equipment.
[37]	Interest – The 0% rate applies, among others, to interest paid on trade receivables and current accounts between financial institutions.

Footnotes	
[38]	Interest – The 0% rate applies to interest paid to the government, a political subdivision, a local authority or the central bank. The 10% rate applies to interest paid to financial institutions. The 25% rate applies in all other cases.
[39]	Royalties – The 5% rate applies to royalty payments for the use or the right to use copyright. The 15% rate applies to royalty payments for, among others, patents, trademarks and know-how.
[40]	Interest – The 0% rate applies to interest on loans granted by the government, a political subdivision, local authority or central bank. The 5% rate applies to interest on loans granted by financial institutions to a company (subject to conditions). The 10% interest rate applies in all other cases.
[41]	Dividends – The 0% rate applies if the receiving company holds a direct participation of at least 20% of the capital of the distributing company. In all other cases, the 15% rate applies.
[42]	Interest – The 0% rate applies, among others, to interest paid to the government, a political subdivision or a public body. The 2% rate applies, among others, to interest paid on loans granted by a financial institution (subject to conditions). The 10% rate applies in all other cases.
[43]	Royalties – The 0% rate applies, among others, to royalty payments for the use or the right to use copyright of scientific work, patents, trademark and know-how. The 10% rate applies to royalty payments for the use or the right to use copyright of literary or artistic work.
[44]	Dividends – The 0% rate applies if the receiving company holds a direct participation of at least 10% of the capital of the distributing company (except if the distributed income is derived from immovable property by an investment vehicle in which case the 15% rate applies (subject to conditions)). The 10% rate applies in all other cases.
[45]	Dividends – The 5% rate applies if the receiving company holds an (in)direct participation of at least 50% of the capital of the distributing company. The 10% rate applies if the receiving company holds an (in)direct participation of at least 25% (but less than 50%) of the capital of the distributing company. The 15% rate applies in all other cases.
[46]	Royalties – The 5% rate applies, among others, to royalty payments for patents. The 10% rate applies, among others, to royalty payments for trademarks. The 15% rate applies in all other cases.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

According to the ordinary statute of limitations for income taxes, the Belgian tax authorities can carry out a tax audit and levy additional taxes for a financial year up to three years as from the first day of the year following the year under review. In the case of fraud, this period is extended to seven years.

In certain specific circumstances, other assessment periods may apply:

- If some under-valuation of assets or over-valuation of liabilities were to be discovered during a tax audit, these "hidden reserves" can be taxed as a profit of the financial year during which they were discovered (unless it can be demonstrated that this under-valuation or over-valuation has already been taken into account in order to determine the company's taxable income);
- The Belgian tax authorities are entitled to delay the adjustment of the amount of tax losses carried forward of a loss-making company until these losses are used (i.e., offset against the taxable basis); and
- A longer (five year) statute of limitations applies to WHT matters.

Also in VAT matters, the ordinary statute of limitations is three years and seven years in the case of fraud.

Belgian tax due diligences are often limited to the financial years for which the ordinary statute of limitations of three years is still open.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Please explain how the tax affairs of the Belgian Target Entity are handled (e.g., in-house or with the assistance of an external account/advisor). This question concerns all tax matters (corporate income tax, VAT, withholding taxes, wage taxes, regional and local taxes, customs and excise duties).
2	Tax Due Diligence	General	Please provide all correspondence (including requests and notifications, responses, notices, tax recovery) with the tax authorities regarding tax audits and procedures/litigation announced, pending or closed involving the Belgian Target Entity.
3	Tax Due Diligence	General	Please provide a copy of all rulings, agreements, decisions obtained from or concluded with the tax authorities, if any, and a copy of all correspondence with the tax authorities in this respect, if any.
4	Tax Due Diligence	General	For the intercompany transactions involving the Belgian Target Entity please provide: - A brief description of the nature of the transactions (e.g. management services, cost recharges, financing); - Amounts per year for FY19-21 for each type of transaction - A description of the TP methodology applied; - The underlying documentation (e.g. master file/local file, underlying intercompany agreements and benchmarking studies).

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Nº.	Category	Sub-Category	Description of Request
5	Tax Due Diligence	General	Please provide detailed information regarding any restructurings (such as a (cross-border) transfer of assets (including a business or a universality), mergers and/or demergers) carried out by the Belgian Target Entity since its day of incorporation.
6	Tax Due Diligence	General	Has any MDR (DAC6) reporting been made by the Belgian Target Entity and/or its advisers during the Reviewed Period? Please describe monitoring procedures in place.
7	Tax Due Diligence	General	Please specify if the Belgian Target Entity has benefited from any tax measures taken by the government (including payment deferrals) to alleviate the economic consequences of the COVID-19 pandemic and provide the relevant documentation.
8	Tax Due Diligence	General	Please confirm that the Belgian Target Entity does not have, and has never had, a permanent establishment or any other taxable presence in a country other than Belgium.
9	Tax Due Diligence	Corporate income tax	Please provide the annual accounts (internal and external) of the last three financial years (FY19, FY20 and FY21) of the Belgian Target Entity, together with their annexes, amortization schedules and valuation rules.
10	Tax Due Diligence	Corporate income tax	Please provide the corporate income tax returns for FY19-FY20 (including all annexes) of the Belgian Target Entity, and the draft tax provision and/or draft corporate income tax return (including annexes) for FY21.
11	Tax Due Diligence	Corporate income tax	Please provide the FY19-20 corporate income tax assessment notes received by the Belgian Target Entity.
12	Tax Due Diligence	Corporate income tax	Please confirm whether the Belgian Target Entity made any (in)direct tax payments to tax havens during FY19-FY21.
13	Tax Due Diligence	Corporate income tax	Please provide information regarding any assets held in the framework of financial leases (and relating contractual documentation).
14	Tax Due Diligence	Corporate income tax	Did the Belgian Target Entity incur any expenses to the benefit of its shareholders or any other third party?
15	Tax Due Diligence	Corporate income tax	Please provide detailed information in relation to any reimbursement of costs. Please specify whether any “expenses proper to the employer” are paid by the Belgian Target Entity to its employees (and how much if fixed allowance)? Please provide a detailed calculation of the amounts paid out by the Belgian Target Entity in FY19-21 as well as any policy or ruling that would exist in this respect.
16	Tax Due Diligence	Corporate income tax	Please confirm that the Belgian Target Entity is in compliance with applicable rules regarding its obligation to establish and file tax slips (281.50) and statements (325.50) for the fees and commissions paid to employees, directors or (external/internal) service providers during FY19-FY21.

Nº.	Category	Sub-Category	Description of Request
17	Tax Due Diligence	Corporate income tax	Please provide us with an overview of the fees and commissions paid to foreign service providers by the Belgian Target Entity (including intercompany services) during FY19-21 and a copy of the corresponding filed tax slips 281.50 and summary statements 325.50.
18	Tax Due Diligence	WHT	Please provide a description of the movable income (interest / dividend / royalties) paid or attributed by the Belgian Target Entity during FY17-21, and provide us with the relating withholding tax returns (273 and 273A) and the documentation justifying a potential exemption or reduction of withholding tax.
19	Tax Due Diligence	WHT	Please provide the FY19-22 tax assessments regarding real estate withholding tax of the Belgian Target Entity.
20	Tax Due Diligence	WHT	Please provide information regarding potential constructions/ renovations / substantial improvements of real estate held by the Belgian Target Entity as of its incorporation and proof that such constructions/renovations/improvements have duly and timely been reported to the tax authorities.
21	Tax Due Diligence	VAT	Please specify whether the Belgian Target Entity is part of a VAT group. If so, provide all relevant information regarding the VAT group.
22	Tax Due Diligence	VAT	Please provide monthly or quarterly VAT declarations and VAT listings (including intra-community listings) of the Belgian Target Entity for FY19-22.
23	Tax Due Diligence	VAT	What is the VAT status (i.e. VAT credit or debit position) of the Belgian Target Entity (or, as the case may be, the VAT group) as per 31 December 2021 and at the time of this due diligence?
24	Tax Due Diligence	VAT	Please confirm that the Belgian Target Entity does not hold any foreign VAT registrations or provide information regarding such registrations.
25	Tax Due Diligence	VAT	Please provide information on the VAT regime of the Belgian Target Entity (including their deduction system). If a partial VAT recovery right is applicable, please provide us with the (pro rata) calculation made by the Belgian Target Entity for FY19-22.
26	Tax Due Diligence	VAT	Please confirm that all invoice requirements for Belgian VAT purposes are satisfied and provide a sample of invoices (including invoices with respect to intracommunity delivery of services, imports and exports).
27	Tax Due Diligence	VAT	Which VAT rates (0%, 6%, 21%, VAT exempt) are applicable on the supply of goods and services by the Belgian Target Entity? How is ensured that the Belgian Target Entity applies the correct VAT rates? Please provide a sample of invoices of each type of transaction.
28	Tax Due Diligence	VAT	Did the Belgian Target Entity recover VAT on costs incurred for the benefit of shareholders or other parties?

Nº.	Category	Sub-Category	Description of Request
29	Tax Due Diligence	VAT	Please confirm that the VAT deduction limitations (e.g. VAT on company cars, mobile phones, restaurant costs, etc.) are correctly applied.
30	Tax Due Diligence	VAT	Please provide a detailed overview of VAT deducted by the Belgian Target Entity at the occasion of the construction, acquisition, transformation, development or renovation of real estate.
31	Tax Due Diligence	VAT	Please provide a reconciliation of the VAT declarations and the turnover of the Belgian Target Entity for FY19-21.
32	Tax Due Diligence	Wage taxes	Please provide a sample of the professional withholding tax declarations (form 274).
33	Tax Due Diligence	Wage taxes	Please provide detailed information regarding any (partial) exemption of professional withholding tax (e.g. for R&D, overtime, night work, etc.) that has been applied by the Belgian Target Entity during FY19-21.
34	Tax Due Diligence	Social security	Please provide us with a certificate issued by the National Social Security office (often via the payroll agency) stating that the social security contributions have been paid up to and including the previous quarter.
35	Tax Due Diligence	Social security	Has the Belgian Target Entity been subject to any visit of the social security authorities? If so, please provide a copy of all documentation related thereto.
36	Tax Due Diligence	Social security	Please confirm that the Belgian Target Entity filed the necessary DIMONA and, where applicable, LIMOSA declarations in due time.
37	Tax Due Diligence	Social security	Please provide us with a copy of the work regulations and a sample of the employment contract(s) and a copy of pay slips for the last 12 months for one of the employees.
38	Tax Due Diligence	Social security	Please provide us with an overview of self-employed personnel and copy of consultancy contracts, management contracts and contracts for similar services.
39	Tax Due Diligence	Social security	Please provide us with a description of the actual working relationship with the self-employed personnel/consultants/freelancers.
40	Tax Due Diligence	Social security	Please provide an overview of all salary components and benefits that are not subject to the ordinary social security contributions for the Belgian Target Entity, together with an explanation of the applicable social security treatment.
41	Tax Due Diligence	Social security	Does the Belgian Target Entity apply any reductions on social security contributions? If so, please provide an overview of the applied reductions and the underlying documentation justifying the application.
42	Tax Due Diligence	Social security	Please provide us with a copy of any individual (contract) or collective incentive or remuneration plan (stock option plans, bonus schemes, CBA 90 plan, share options, bonus agreement/policy, etc.).

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Nº.	Category	Sub-Category	Description of Request
43	Tax Due Diligence	Social security	Did the Belgian Target Entity make any payments to employees leaving the entity that were not subject to social security contributions?
44	Tax Due Diligence	Social security	Are there any employees or self-employed workers who are posted to Belgium and who are not subject to Belgian social security? If so, please provide us with a copy of the relevant A1 form (or similar) and contractual documentation relating to such posting.
44	Tax Due Diligence	Other	Please confirm that the Belgian Target Entities have monitoring procedures in place to check whether a (sub-)contractor engaged to perform works on immovable property (e.g. building, rebuilding, finishing, setting up, restoring, maintaining, cleaning and demolishing of immovable property) or similar works (e.g. central heating, sanitary systems, electrical installations and wall coverings) has no outstanding (tax) debts.
45	Tax Due Diligence	Other	Please provide the FY19-21 tax returns and tax assessments of all local and regional taxes for the Belgian Target Entity as well as all correspondence with the tax authorities in this respect.
46	Tax Due Diligence	Other	Please provide information regarding any other relevant matter in relation to taxes of the Belgian Target Entity which has not been addressed in the previous questions.

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