TAXE Committee : Country specific fact sheet
Belgium

Roadmap for Green delegation

0) Main Features of the Belgian tax haven

- No tax on capital gains
- No wealth taxation + bank secrecy for residents
- 95% tax exemption for dividends remitted to Belgium from subsidiaries of Belgium based holding companies
- repatriation of European profits into third countries that have concluded a double taxation treaty with Belgium without paying dividend withholding tax
- Excess profit ruling system (see below Point 1)
- 80% of patent related income exempted from corporation tax, resulting in an effective tax rate of maximum 6,8% on this income (see below Point 2)
- Home for corporate treasury operations (Notional Interest Deduction, see below Part3)

In Detail:

- Tax benefits

All commercial companies in Belgium are subject to corporation tax. The nominal corporate tax rate is 33.99%. For small and medium-sized enterprises (SMEs) with a taxable profit not exceeding €322,500, the tax rate drops to 24.98%.
Legal mechanisms make it possible to lower the nominal rate. Various tax incentives for individuals and companies make Belgium one of the most attractive places to locate and do business.
Within the Federal Public Service Finance, the Fiscal Department for Foreign Investments provides free, confidential advice and assistance on tax matters to potential foreign investors and those already established in Belgium.

- Ruling

Belgium's tax legislators are aware of the increasing importance of upfront legal certainty for existing and potential investors. Accordingly, Belgian tax legislation provides economic players with a generally applicable advance 'ruling' practice.
The procedure is simple, rapid, efficient, legal and free of charge. The ruling is an advance decision that is issued within three months and is legally binding for up to five years.

- Notional interest deduction (NID)

One of the most innovative measures is the 'notional interest deduction' (NID, see below point 3). This is a tax deduction for venture capital which alleviates the differences in tax treatment between finance raised through borrowed capital and finance raised through equity capital.
The system allows companies to deduct from their tax base a notional interest charge (not stated in the accounts) corresponding to a specific percentage of their 'adjusted' equity capital.

- Dividend withholding tax exemption

The withholding tax exemption on some dividends is also very popular with investors. This new exemption extends the European Parent-Subsidiary Directive between the EU Member States and Switzerland to all countries that have a double tax treaty with Belgium, such as Hong Kong and the United States.
Using Belgium as their holding location for investments in Europe allows corporate investors from treaty countries to repatriate European profits without paying dividend withholding tax and without a limitation on profits.

- Tax Shelter

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

- Reduced wage costs

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

- R&D

There are various tax incentives for research & development:
Partial exemption from payment of wage tax for researchers
Tax exemption on allowances and capital and interest subsidies awarded by regional institutions to support corporate R&D
Tax deduction on patent income

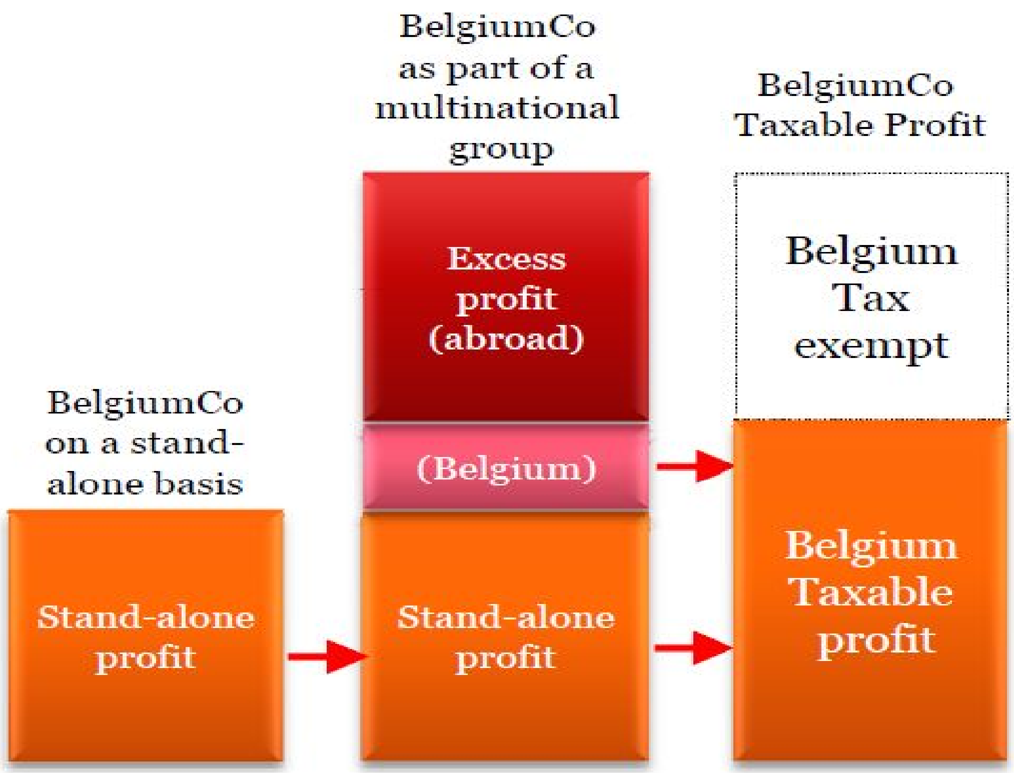
Increased investment deduction
Tax credit for R&D

Sources: NickMathiason, Bureau of Investigative Journalism & Finance Uncovered
http://business.belgium.be/en/investing_in_belgium/tax_benefits/

1) **Excess profit ruling system**
Background: The excess profit ruling system was introduced in Belgian Law in 2004 modifying the Code des Impôts sur les Revenus / Wetboek Inkomstenbelastingen dating from 1992.

What is it we're talking about? : These rulings allow multinational companies that have set up a subsidiary in Belgium to reduce their corporate tax liability by evidencing "excess profits" that allegedly result from the advantage of being part of a multinational group. Such advantages include economies of scale, intra-group synergies and know-how, expertise.

The issue is two-fold: firstly, intangible assets such as know-how and synergies gives rise to subjective estimations, secondly, the tax deduction granted by Belgian tax authorities should be subject to corporate tax in the country where the company is incorporated, this is known as the phenomenon of "double non taxation".



The chart above is extract from the Belgian Tax Desk of PwC US International Tax services itself and dates back to 2012. It clearly evidences the difference of treatment between a Belgian Stand-alone company and a multinational group implied by the excess profit ruling system.

According to the then Belgium's Finance Minister, Mr. Reynders, Belgium's new tax provision was implemented in accordance with the so-called "*arm's lenght principle"* promoted by the OECD itself at the time.

This is still the line of argument adopted by Belgian's official in response to the EC's current inquiries.

Yet, recent statements by OECD officials suggest that the principle failed and should be given up.

Furthermore, Belgium does not exchange information regarding these rulings which is contrary to EU law. The excess profit ruling system is tailor made and desperately lacks of transparency.

In 2011, Green Belgians (ECOLO-Groen) have submitted a bill amending the disputed law but to no avail.

<u>Current situation</u> : The excess profit ruling system is currently subject to an investigation since February 2015 and might be found unlawful according to competition law should it grant an advantage to Multinational companies over national ones.

Sources :
EC Press release → http://europa.eu/rapid/press-release_IP-15-4080_en.htm?locale=en
CNCD (Belgian NGO) article → http://www.cncd.be/Excess-profit-ruling-ou-comment-la
Independent Belgian Tax adviser Stephen Hurner →
http://www.tax-advisers.be/fr/node/434
Belgian Greens Bill Draft brought in Belgian's Chamber of Representatives on March 29th 2011 → http://www.tax-advisers.be/sites/default/files/pdf/53K1330001.pdf
Price Waterhouse Corporation Presentation "Doing Business in Belgium" Washington Seminar on Belgian Tax Aspects, September 27, 2012 →
http://www.biologeurope.com/usr/Belgian-Tax-aspects-by-PWC.pdf

2) **Patent box regime**

Background : This supposedly R&D tax incentive was introduced in 2007 in Belgium just as in 9 other MS tax system such as Luxembourg, the Netherlands, France or the UK, to name a few.

What is it we're talking about? : Basically, it enables corporate income from the sale of patented products to be taxed at a lower rate than other income. In other words, a Belgian company or a Belgian permanent establishment of a foreign company may deduct up to 80 percent of qualifying gross patent income, resulting in an effective tax rate of maximum 6,8% on this income.
To benefit from the Patent Income Deduction, the R&D centre must qualify as a “branch of activity” or “line of business,” which means that it should be a division of an entity that is capable of operating autonomously.
The Patent Box specifically provides that the R&D centre can be located outside Belgium as long as the centre belongs to a Belgian legal entity.
Intellectual ownership rights other than patents are excluded by law. These regard know-how, trademarks, designs, models, secret recipes or proceeds.
To give a comparison, there is a similar regime in Luxembourg is way more lax. However, the Belgian patent box regime can be deemed to be "aggressive" since it favours tax competition in the EU.

Current situation: The Commission has formally requested information about intellectual property taxation regimes, so-called "patent boxes", from the ten Member States with such a regime so that includes Belgium. Likewise, Patent-boxes are scrutinized by the Codes of Conduct.

It is likely that the regime will not be deemed unlawful for it is a widespread tax regime and its harmfulness is harder to demonstrate than the excess profit rulings system.
As evidenced by our *Le Soir* investigation journalist, Xavier Counasse, the Patent box regime in Belgium has stricter conditions and a much more limited scope than the Luxembourgish regime. This is the latter that we should focus on and battle out.
Sources :
Griffith, R., H. Miller and M. O'Connell, 2010, Corporate taxes and intellectual property: simulating the effect of Patent Boxes, *Institute for Fiscal Studies*, IFS Briefing Note 112
European Commission, TAXUD, October 2014, A Study on R&D Tax Incentives Final Report, European Union

3) **Notional Interest Deduction (NID)**
Background: Since tax year 2007, NID enables all companies subject to Belgian corporate tax to deduct from their taxable income a fictitious interest calculated on the basis of their shareholder's equity (net assets). The main purpose of this innovative measure is to reduce the tax discrimination between debt financing and equity financing. Indeed, in the case of loan capital, the interest paid is deductible from the taxable base, while with equity capital the dividends are taxable.

What is it we're talking about? : It is calculated as follows → Notional interest deduction = notional interest rate x adjusted equity
In this way, the NID allows the actual deduction to be proportional to the equity invested in the Belgian company or branch office. The measure applies to all companies with a taxable presence in Belgium, whether local or foreign, and irrespective of their size, industry or activities.
The notional interest rate for tax year 2013 (i.e. accounting year ending on 31 December 2012 or later in 2013) is 3 %. It has even been increased to 3,5 % for SMEs.

Current situation: ECJ ruled on 4. July 2013 (Case C-350/11 – „Argenta Spaarbank NV") that NID violates the freedom of establishment (Art. 49 TFEU) because the equity is adjusted through deducting non-Belgian assets generating non-Belgian profits. NID therefore only applies for equity that leads to taxable income in Belgium.
Already beginning of 2012, the European Commission requested Belgium to change its law as result of an infringement procedure. Belgium complied and amended its national law in 2013.

Sources:
http://www.minfin.fgov.be/portail2/belinvest/downloads/en/publications/bro_notional_interest.pdf
http://www.amcham.be/policy/corporate-taxation/notional-interest-deduction
http://www.roedl.de/themen/fonds-brief/2013-07-31/eugh-nid-in-belgien-nicht-eu-konform

4) **Doubts surrounding the Belgian tax administration full independence**
The Service des décisions anticipées en matieres fiscales (SDA) is the body within the Belgian tax administration that deals with all tax rulings requests from individuals and companies.
It was created in 2004, the SDA's homepage claims that it is an "autonomous body of the Belgian tax administration".
In spite of being autonomous and more rigorous in granting tax rulings than the Lux tax administration for instance, it is not exempt of serious transparency and accountability issues.
As autonomous as it might be, it is not politically independent as illustrated by the recent side-lining of former head, Mrs. Véronique Tai, who was not confirmed in her position by new Finance Minister, Mr. Johan Van Overtveldt (N-VA). The nomination of one of his close collaborators, Mr. Steven Vanden Berghe, raises doubts around SDA's political independence and impartiality.
Therefore, the SDA might be more prone and less resilient to political pressures than other divisions of the tax administration.
Additionally, in its 2013 annual report, the SDA accepted 88,9% of the requests it received. This figure has gradually increased since 2007 when the approve rate was at 74,6%.